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THE INTERNATIONAL PROTECTION
OF WILD LIFE

BY
SHERMAN STRONG HAYDEN

THE INTERNATIONAL PROTECTION OF WILD LIFE

*An Examination of Treaties and Other Agreements
for the Preservation of Birds and Mammals*

BY

SHERMAN STRONG HAYDEN, Ph. D.



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PREFACE AND ACKNOWLEDGMENTS

THE eventful months which have intervened between the preparation and the publication of this work have added little that is new to the matter outlined in the introduction and elaborated in the text. In general, it is not likely that administration and enforcement of existing wild life legislation have improved, and probable indeed that they have everywhere deteriorated in some respects. Unfortunately, the difficulty of obtaining reliable foreign information at this time makes an exact accounting impossible, a fact particularly regrettable in respect of the whaling industry, where our last complete figures are those for the year 1938. As to the fur seals, the outbreak of war between this country and Japan has naturally put an end to any early revision of the Bering Sea convention, though conceivably the seals may actually benefit by this since our government is no longer bound to respect Japan's fishing rights in the Pacific. The same may apply to Antarctic whaling.

My thanks are due to the Faculty of Political Science at Columbia University, and particularly to Professors Joseph P. Chamberlain and Philip C. Jessup for their encouragement and guidance, to the Library Staff for their professional assistance, to Dr. W. Reid Blair and Miss Ruth Dauchy of the American Committee for International Wild Life Protection for generous cooperation and for supplying me with invaluable material, to Mr. Francis Hemming, Secretary of the London Conference of 1933, for kind permission to use unpublished documents bearing on the Convention of that year, to my friend Larry Leonard for sharing certain material on which he himself was working, to Miss Valerie Reich who ably typed the manuscript, and to numerous other persons.

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INTRODUCTION

THIS is an enquiry into man's protection of animals through the device of international agreements or treaties. To set forth the whole subject of nature protection in detail would require a work of very great dimensions and would repeat to no purpose many things that have already been said by others, for the subject matter of the total field is almost boundless; therefore this work is addressed to a single branch of it.

In the early days of our Western world, the feudal masters of Europe were already giving regular protection to at least the nobler forms of wild life resident upon their domains, and were accustomed to inflict the severest penalties upon any poacher unlucky enough to get caught. This, however, was not so much for the game's own sake, as to insure that the object of the chase should be reserved and preserved for his lordship's pleasure alone. This system of things remained so long the theoretical foundation of game protection, that the modern substitution of social democracy for privilege has often meant bad news for the protected creatures. It has been unkindly said that the great revolution turned the French into a whole nation of poachers, and it appears that the post-war land reforms in such states as Rumania brought disaster to the native wild life which the Hungarian gentry had formerly protected.¹ The preservation of Europe's game then has been partly due to the self-interest of a limited class, but if the principle is to survive in the modern age, it must find a different foundation to rest upon.

Such a foundation fortunately exists.² Personal regulation by the crown or by the manor lord passed imperceptibly over into national protective legislation by or before the nineteenth century,³ just as most subjects of regulation were passing into the

1 Brouwer, G. A., "The Organisation of Nature Protection in the Various Countries," *American Committee for International Wild Life Protection*, pub. no. 9, New York, 1938, p. 58.

2 One should also mention the existence, especially in Germany, of regulation by local governments, and by voluntary associations of local landowners.

3 France had a Code of Waters and Forests as early as 1669.

hands of constitutional bodies by that time. Even in North America, where casual prodigality in the use of material resources has been a spendthrift classic, a deer law was passed by South Carolina as early as 1769.⁴ From 1850 on, the stream of national protective legislation rapidly widened, until by the present day all major and most minor nations have ample protective codes, at least on paper though of varying real effectiveness.⁵

Cooperation among the various countries in according protection to animals, the particular subject here under review, is a more recent growth, its fruits being so far as I can learn confined to the late nineteenth and the twentieth centuries, and indeed, largely to the latter alone. The purpose of the present essay is threefold: (1) to examine the history of certain particular situations which could only be resolved by the joint activity of two or more governments, (2) to expound in detail the attempted remedies, and (3) to enquire how far the remedies thus attempted have succeeded in repressing the antecedent mischief. In doing this I have deliberately excluded from study the fish treaties, and for two reasons: first, the greater number of them deal primarily with the grant of rights, reciprocal or otherwise, to exploit the supply, and only incidentally if at all with its conservation;⁶ second, this field has been for some time and still is the subject of detailed study in the research of Daggett, Leonard and others⁷ and to duplicate their findings in the present work seems useless.

4 Swan, W. A., "A History of Game Legislation in the United States," 18 *Case & Comment* 248, 1911.

5 To enumerate these laws would take much space and still lie outside the scope of the present study. A good summary, though now some years behind the times, may be found in the work of Brouwer, cited *supra*, p. 11.

6 Examples of conservation treaties (and about the only ones) are the North Sea Convention of 1882, the U. S.-Canada halibut treaties of 1923 and 1930, *United States Treaty Series* 837, *League of Nations Treaty Series* 32, 94) and the sockeye salmon treaty of 1930 (*United States Treaty Series* 918).

7 See e. g. Daggett, A. P., "Regulation of Maritime Fisheries by Treaty," 28 *American Journal of International Law* 693, 1934.

Why is protection necessary? There would obviously be no problem if the world's wild life were not threatened with real depletion or worse; but this is the fact. We now know that nature itself has placed us in an age of relative extermination; Osborn and Anthony in a classic article ⁸ point out that the long domination of the glacial ice really ended the age of mammals which had lasted for something between fifty and a hundred million years, so that the mammals of today are a sort of remnant class, and mankind something like destiny's agent either for preservation or annihilation of the relatively few that remain. The same authors and many others ⁹ further abundantly show that man has generally interpreted his mission in the latter sense; in the nineteen twenties his regular bag has been estimated at fifty million animals a year, with the fur trade skimming the cream at about a hundred million dollars annually.¹⁰ There is every possible incentive to such killing; fur bearing animals from seal to chinchilla, smartly feathered birds, edible species of all kinds, curious beasts that look well on the wall, the elephant with its ivory treasure, the whale with its rich store of oil,—all are good substance of commerce and profit, and many though perhaps not quite as many fall before the sportsman as well.

As if these factors were not enough, millions more have been forced from the earth as man's growing population and industry exact more and more of the available land.¹¹ In Europe save in Russia and Northern Scandinavia a true wilderness no longer exists: on the settled part of the continent the beaver, once common, survives only in two colonies, on the Rhône and

⁸ Osborn, H. F. and Anthony, H. E., "Close of the Age of Mammals," *3 Journal of Mammalogy* 219, November, 1922.

⁹ *Ibid.*, also the works of Hornaday, W. T., *infra*.

¹⁰ *Ibid.*, "Can we save the Mammals?," *22 Natural History* 388, 1922; Ashbrook, F. G., "The Fur Trade and the Fur Supply," *3 Journal of Mammalogy* 1, 1922.

¹¹ Man shares with a few other species, mostly rodents, the distinction among mammals of having increased his population in recent history.

on the Elbe.¹² The elk (a close relative of the moose in America) is reduced to a few hundred in eastern Poland, the bison to a handful in the Lithuanian forests,¹³ the ibex to small herds in the high Alps and Pyrenees. China's big game is long gone,¹⁴ India's, though longer spared for religious reasons, is fast going. North America is no longer wild except in the extreme north, and even there the fur trappers have swept out most of the valuable pelts as they have everywhere else except possibly north-east Asia.¹⁵ Africa alone can still show the world a big game treasure on the grand scale, and even this is much encroached upon and daily threatened with destruction as our next chapter will show.

Have we really any business to do this? To some, and I hope many of us, there is something shocking and repellent in this spectacle of wanton extermination,—wanton because quite unnecessary to our own good life, and indicative of nothing but our greed and thoughtlessness. It seems incredible that with all our talents of rationality and skill, all our genius for creative thought and visible achievement, a shameless, reckless waste still rules much of human behaviour. Can nothing be done?

At the very least there is a clear enough case for legislative aid where an economic asset incapable of replacement is being dissipated, and it is on this ground that the right to protect is commonly rested. Almost equally plain is the situation where sportsmen are destroying the subject matter of their own recreation, or where living creatures of value to biological science are in danger of disappearance. But I think there is an even profounder reason why men should act.

12 Bougault, E., *La Protection des Animaux et le Droit International*, Bordeaux, 1937, p. 3 ff.

13 Here the animals were nearly wiped out during the last war, the Kaiser refusing to remove them to a place of safety because they were personal property of the Czar, whose permission he couldn't get: see "War and Wild Life," Barton, D. R., *Natural History*, Oct., 1939, p. 183.

14 The elephant disappeared from south China about 1400; see A. Hermann, *Atlas of China*, Cambridge, Mass., 1935, pp. 6-7.

15 Hornaday, W. T., *Our Vanishing Wild Life*, New York, 1913.

If only a sufficient number could bring themselves to look upon the natural world as a trust committed to our common care, with its inhabitants to be preserved alive where possible¹⁶ and its physical form to be radically changed and altered only as the general need may require, is it not thinkable that the whole destructive side of human nature might in time be softened as well? The cultivation of this spirit of moderation and care I believe to be the ultimate justification of all wild life preservation, individual or international, more truly than the economic, scientific, or recreational value of the thing preserved, the grounds regularly advanced as prime reasons for taking action. Consequently I have spoken throughout of preservation and protection, and have mostly avoided using the word "conservation," which besides being overworked is more strictly referable to natural resources having a genuine value in money.

In such a respect for the face of the land men live in, and for the creatures that share it, not because the policy pays but because the land is ours and the creatures are our fellows,—and in the consequent growth of international nature legislation and its practical acceptance by the earth's peoples, I can see one hopeful road toward the realization of a different world from that which now so unhappily surrounds us all.

This view is not a new one, and its furtherance by others who have held it has brought about some result; that the result is not greater today cannot be charged to lack of zeal on the part of its adherents. A long list could be made of the men and societies who have freely devoted themselves to the good protective cause, but long lists are wearisome, and to be selective is to risk unfair discrimination. Therefore I shall make here a single inclusive gesture of gratitude and respect to all these persons, many of whom will be specifically mentioned through-

16 Jeremy Bentham, with a warmth of feeling not too frequent in his pages, said: "The day may come when the rest of the animal creation may acquire those rights which could never have been withholden but by the hand of tyranny.... The question is not, Can they reason? nor, Can they talk? but, Can they suffer?"—*Introduction to the Principles of Morals and Legislation*.

out the essay, while paying especial honor to two lifelong pioneers, William T. Hornaday and Paul Sarasin, whose tireless labor did so much to found and to advance the cause of wild life in North America and in Europe respectively.¹⁷

The United States was awake to the need of national action by the first part of the present century, and Europe, having already achieved certain conventions, was apparently on the verge of general international cooperation when the last war broke out. At the eighth International Zoological Congress at Graz, in August 1910, Sarasin proposed a committee of fourteen naturalists in the interest of international understanding concerning nature protection,¹⁸ and suggested that this take the form of national legislation under the guidance of an international commission. The committee was set up, and acting through the government of Sweden sounded the principal powers on the subject of a general agreement (June, 1911). Sixteen nations, including most of the big ones, replied favorably, and only Japan and Rumania were against the plan; so a conference to discuss the next step was convened at Bern in November, 1913.

Various proposals were submitted and something like a draft convention was actually adopted. This would have created a permanent commission of two members to each state or autonomous colony signing the convention, their qualifications not specified though Conwentz urged they be specialists in the field, such commission to be self-regulating and to perform the following functions: "First, the collection and classification of all data relative to the international protection of nature and their publication; second, propaganda [a word not then obnoxious] for the international protection of nature. The com-

17 See especially William T. Hornaday, *Our Vanishing Wild Life*, New York Zoological Society, 1913, New York. A list of many wild life organizations may be found in Brouwer, *supra*, p. 11 under the different national headings.

18 Recueil des Procès-verbaux de la Conférence Internationale pour la Protection de la Nature, Bern, 1914, p. 9 ff.

mission will act through the medium of delegates. Correspondence with the government and institutions of a state adherent to the convention will be carried on by the members of the commission belonging to that state.”¹⁹ A number of nominations were made, though the problem of finance was postponed.

This promising beginning all came to naught because war so soon intervened; and perhaps rather strangely none of the societies which have since busied themselves with the wild life problem have attempted a solution on so large a scale, but have confined themselves to the urging of international action on particular subjects in specific ways. The Conseil International de la Chasse in 1931 for example recommended²⁰ separate particular measures in the case of birds (for which see Chapter two), and also in the case of the elk, ibex, and chamois.²¹ In this country, the Conference of American Raw Fur Traders in 1924 typically resolved:²² “We deem it essential and recommend that the laws relating to fur bearing animals be formulated by the various legislative bodies in pursuance of a uniform policy of conservation and with as full cooperation as possible between states of a *similar climatic or natural condition*.” And one could find more examples. This course, we must admit, is more likely in the long run to yield results,—experience indicating as will be shown that overambitious programs rarely work out, though it is a matter for some regret that the proposal for a permanent international commission has never been revived.

19 Recueil des Procès-verbaux de la Conférence Internationale pour la protection de la Nature, Bern, 1914, p. 173 (My translation).

20 See Conseil International de la Chasse pamphlet Paris, 1932 in American Committee for International Wild Life Protection file, New York.

21 These last animals raise the question of joint protection on frontiers, in which connection see the sixth article of the African convention *infra*, ch. I and the proposal for a joint national park in the Tatra (Brouwer, *op. cit.*, p. 57) which failed owing to friction between Poland and Czechoslovakia.

22 Cited on p. 122 of the Suarez report, *infra*, ch. III, L. N. doc C 196 M 70 1927, VI (1926).

Good will is not always accomplishment, and agreements signed do not in numbers equal resolutions proposed. The rather few international conventions in my selected field are concerned with three distinct problems to be discussed in successive chapters as follows. *First*, the perpetuation of an integral wild life community in a still-primitive area of great extent, threatened with dissolution by human agency. This is the problem of Africa, international in scale because the relevant territory was divided more or less at random among many sovereigns, and its solution was achieved in a creditable though only partial way by the London Convention for the Protection of African Fauna and Flora, 1933, and by the national legislation which followed consequent upon it. Here the motives for protection were primarily scientific and recreational-aesthetic, and only incidentally and in a minor degree economic, the makers of the act feeling that so rare and remarkable a fauna community should not be lost to the study of animal life or to the public enjoyment of nature.

Second, the protection of birds, especially migratory species. In North America this is represented by two principal international agreements attempting to control the systematic slaughter of birds, particularly waterfowl, by sportsmen; the prime motives are again recreational and aesthetic though birds of most kinds are brought under protection and the cash value of insectivorous species at least is almost inestimable. In Europe the economic side has been stressed,—the usefulness of birds to agriculture,—in an effort to get general cooperation in keeping up the bird population despite the density of human settlement. In this section we shall discuss the American treaties of 1916 with Canada and of 1937 with Mexico, and the European Paris Convention of 1902 with the various suggested changes in it.

Third, the conservation of marine wealth. This is a true economic question, though the other factors are certainly present too. For the reasons given above, and also to preserve the proportions of the whole work, I have excluded consideration of the ordinary commercial fisheries and dealt only with the

protection of the mammals of the sea. This is a twofold tale, the successful protection of the fur seals of the North Pacific under the Convention of 1911, and the numerous efforts, at Geneva in 1931, and at London from 1937 to 1939, all more or less unsatisfactory, to halt the extermination of the baleen whales. By these two histories I hope sufficiently to show the great difficulty of preserving animals where a financial interest is actively involved and opposed.

These three topics substantially cover the entire field of international activity with respect to wild life, and will, I think, illustrate about all the varying questions and conflicting interests that can arise therein. The successive examination of each problem and its attempted solution follows.

CHAPTER I

PRESERVATION OF NATURAL COMMUNITIES

I. AFRICAN GAME PRESERVATION

PRESERVED intact from prehistoric time, wild Africa beyond the desert was almost totally unknown to Europe till a single long lifetime ago. Except for the colonies of the extreme south, the land behind the coastal walls was a legend and a mystery, where only the occasional missionary, trader, or pure adventurer laid the first foundations of a new age. But with the eighties these exploratory feelers suddenly blossomed into the Great Scramble. By the century's end the rival claims of imperial Europe were—for the moment—marked out, and the conquerors could pause for a look around to see what they had.

What they chiefly had was a huge crescent of high grassland, almost six thousand miles long, wooded in parts, seasonally well watered, cut off from the coast by escarpments, and embracing the Congo rain forest on its concave side. Over these great plains roamed a hoofed and horned multitude without parallel in the historic world for number and diversity, a paradise of big game as in a vast garden, which captured the imagination and fixed itself in the modern mind as symbolic of Africa itself. This game-garden the conquerors divided in pieces; but the antelope and elephant, checked in their wandering only by the pattern of soil and climate which nature imposed, knew nothing of bench marks and line fences; and as the bison of the West probably took only casual interest in the Irish workers sweating over the rails that forecast his ruin, so the lion stalking his traditional zebra by a South African water hole must have cared little whether Rhodes cheated Lobengula or not.

The result to both has been the same. The ancient warfare of man and beast had maintained a precarious balance till Europe came, but the apparatus of a civilised world tolerates neither primitive man nor his primitive animal rival; and in Africa the

obstacles to either's survival were redoubled, for the dwellers in the great garden had not even a common master. The Scramblers had carved this geographic unity into irregular territorial blocks, creating an international adjusting problem with which this chapter will deal.

The white man in Africa as everywhere brought his gun along. Now plains animals are generally of flocking habit, a social custom which gives relative security against ordinary raiders, but which makes the group peculiarly vulnerable to firearms in presenting the hunter with a large and compact target. Of this the hunter took full advantage.

He killed for fun. The excitement of the chase, the joy of obstacles surmounted, the thrill of personal danger now almost eliminated from sport in civilized lands, even the crude human lust for seeing something fall which some of us may regret but few of us can deny, found in Africa a new fullness of satisfaction. In all husky young nations the boy who doesn't like shooting is apt to be thought less than red-blooded; and we have the word of Mr. Te Water that in South Africa there is hardly a young man who doesn't get his gun and go out on the veldt.¹ The young administrator himself, on whom if on anyone the duty of game protection devolved, looked forward to his African assignment mainly because of the liberal opportunities for shooting.² And this was truer of Africa than of anywhere else because the great size and peculiar appearance of many species made them especially desirable as trophies.

He killed for money. The biltong hunters of South Africa will shoot game, dry and sell the meat as long as there is profit in it. Against this kind of raiding ordinary game laws are useless; the trade will go on till the sale as well as taking of wild

¹ *Minutes*, 1933 conference, London, third meeting, November 1, 1933. These minutes are unpublished, in the American Committee for International Wild Life Protection files at New York, and were used by permission of the Secretary of the Conference.

² *East Africa*, November 9, 1933, clipping in American Committee for International Wild Life Protection files.

meat is made impossible.³ A note of nationalism is struck by two British agents reporting on this commerce in 1897 and 1906 respectively, who exonerate the gentleman and blame the Boer;⁴ but conceding the truth of the charge, one may find economic rather than racial causes here.

Then there are hunters who collect trophies for returning sportsmen unhappy enough to have missed their own intended targets.

But the most important branch of the game business is the age-old trade in ivory, accelerated since 1850 by the growing accessibility of the game and the development of high-power arms sufficient to bring down an elephant with little risk.⁵ Sarasin estimates the slaughter in 1912, an ordinary year, at thirty to ninety thousand.⁶ Twenty years later, anything up to sixty thousand were being taken in the Congo alone;⁷ and this persecution was having a double effect, for while depleting the ranks directly it drove the survivors to poorer lands in search of peace.⁸ Past protection where it existed at all was famously inadequate; Sabi says that at least one mass killing, by means of bush fires into which the elephants were driven amid drums and shouting, was officially arranged.⁹ One key to this attitude may be that the annual ivory revenue of three East African territories between 1928 and 1931 was about \$1,500,000, and that this was an important source of government funds for the

3 Hubback, T., and Hawkins, G., *Abstract of Report and Recommendations, Wild Life Commission of Malaya*, London, 1933, p. 47.

4 Accounts and Papers (hereafter referred to as A & P) 1906, vol. 79 (Cd. 3189) # 14, Selous, F. C. to Foreign Office, August 15, 1897; A & P 1909 (Cd. 4472) # 5, Sadler to Elgin, September 28, 1906.

5 "Sabi," 1 *Journal of the Society for the Preservation of the Fauna of the Empire, New Series*, p. 35. This source is hereafter called "Fauna Journal" and the Society, "Fauna Society."

6 Rec. des procès-verbaux, Bern conference, Bern, 1914, p. 53.

7 Bougault, E., *La Protection des Animaux*, Bordeaux, 1937, p. 105; 1933 Conference, memorandum by C. W. Hobley, in American Committee for International Wild Life Protection (hereafter referred to as ACIWL) file.

8 *The Field*, Oct. 21, 1933, p. 1022.

9 Sabi, *op. cit.*, p. 37.

financing of game protection,—that is, game supplies *public as well as private* revenue and the elephant pays the bill.¹⁰ Moreover, if your territory has laws but your neighbor has none, the hunters drive the game over the border and you lose the beast and the business both.

Beside the elephant trade has grown up a lively trade in rhinoceros horn, prized in the East as an aphrodisiac to the tune of \$5 a pound.¹¹ This demand creates a hunter's market to which the rhino, stupid, truculent, and slow-breeding, falls an easy sacrifice. In the four years ending 1931, five tons of horn, representing two thousand animals, were exported,¹² exclusive of an uncertain amount smuggled in defiance of law. Free Ethiopia, with practically no administration, was a bad spot for years; ivory or other trophy could be taken illegally in East Africa and passed by the customs on the ground it came from Ethiopia. Before 1900, Zanzibar was even more notorious as a smuggler's fence, but this situation was finally cleared up.¹³

Besides outright smuggling and fraudulent claims of legal capture beyond the border, a third evasion was possible. The hunter or trader could claim that he found the animal dead,¹⁴ for it has been a common government practice to reward the finder of a dead elephant, who troubles to salvage its ivory, with a percentage of the sale price. The natives early discovered the possibilities of killing an elephant and giving its tusks a specious appearance of age by burying them and burning a dung fire atop the cache. This racket has never been adequately dealt with, because it is one of those things which once started are hard to stop, and because the sale price over and above the premium yields a tidy little revenue to the political authority.

10 Hobley memorandum, *supra*, p. 23.

11 *Ibid.* The "unicorn" played a part in medieval medicine also, a piece of this horn having been fed to an ailing pope to cure him. The pope died.

12 *Ibid.*

13 *East Africa*, November 9, 1933, comments on Conference.

14 "Sabi," *loc. cit.*, p. 35; Caldwell, K., in 22 *Fauna Journal*, p. 49 ff, May, 1934.

Finally, the settler kills to protect his crops and stock from destruction; for the development of agriculture necessarily converts the wild life into an enemy.

In all these ways the European was a direct menace to the game, but his coming had other and probably equally effective results. White traders soon supplied the natives with arms which quickly stepped up the rate of destruction. The supply of guns, old and obsolete to be sure, spread so fast in the explorers' wake that the Brussels agreement of 1890¹⁵ to check such traffic where not already in existence was practically a dead letter from birth. Pitman's report¹⁶ testifies to twenty-five thousand native hunters in Northern Rhodesia alone. There are no exact figures on native killing, but it must have increased enormously for at least three reasons,—the sheer delight in a new, noisy, wonderworking toy, the outlet for game in the new urban markets, and the diversion upon wild animals of the energy once worked off by the natives in killing each other.¹⁷

The question whether natives kill as many animals as settlers, important for its bearing on the possible remedy, is not definitely answerable, for the material dealing therewith contains much recrimination, less ascertained fact. To some extent their activities are interlocked; after all the European is the source of the native's increased ability to kill, and by putting the best land under cultivation he concentrates the game upon the marginal territory where the other can get it more easily, and where—himself dispossessed and hungry—he often must do so to protect his own diminished holding.¹⁸ Wissmann, a German official of the nineties, placed the chief blame on the settlers, but

¹⁵ Sabi, *op. cit.*, p. 35.

¹⁶ Pitman, C. R. S., "Report on Faunal Survey of Northern Rhodesia," 1932, quoted in *Nature*, 1936, p. 619.

¹⁷ Bougault, *op. cit.*, p. 106 ff. According to this author the pacification of the Ubangi Shari about 1918 was followed by a great increase in native game killing.

¹⁸ A & P 1906 (Cd. 3189) # 74, Delamere to Foreign Office, August 12, 1900.

Sharpe was of squarely the opposite opinion;¹⁹ and a recent careful writer²⁰ thinks all the animals killed by Europeans are few indeed compared to the wholesale slaughter by thousands of natives in some parts of the East, while Pitman comes to similar, more cautious conclusions.²¹

But even had white and native alike refrained from any of the foregoing activities and entertained only fraternal feelings toward the wild, the mere fact of European occupation would have displaced the herds. Fencing of the grazing range and tillage of the soil inevitably straitened the free wild steppe on which alone a great multitude of creatures can roam unchecked; extensive agriculture is of all human activities the least compatible with abundance of game, and though many Americans hardly realize it the disappearance of the wilderness in our own country is most complete not in the populous states of the industrial east but in the relatively thinly settled corn and cattle country. Whether desiccation of the soil by overuse of marginal land is an aggravating factor in Africa as well as here I am not sure, but there is some evidence of it.²²

Fires, commonly used for clearing land, are a steadily growing menace, even though the effect on wild life is incidental.²³

Following the settler, or in some cases preceding him, come road and railway projects which dissect the natural habitat about as effectively as fences. To take an example from America again,²⁴ recall that the building of the Union Pacific cut the bison herd into two parts, the northern estimated by Hornaday

19 *Ibid.*, # 7, Sharpe to Salisbury, Sept. 9, 1896; # 10, Wissmann to Richthofen, April 2, 1897.

20 Hone, E., "African Game Protection." New York, 1933, p. 21 (ACIWLP, publication 3.

21 Pitman, *op. cit.*, 1932.

22 See "The Climate of South Africa," 63 *Science N. S.*, Supp., p. x, January, 1925, quoting Professor Schwartz of Stellenbosch.

23 Sabi, *op. cit.*, p. 37.

24 Smithsonian report, 1890 and W. T. Hornaday, "Extirpation of the American Bison," quoted in *A & P*, 1906, no. 55, enclosure 10.

at a million and a half, the southern at three million in 1867. Some estimates are even higher, but all agree that by 1890 less than a thousand wild bison remained. In Africa this has not gone so far but the lesson ought to be clear enough.

If the very roadbed is a sort of fence, the vehicles thereon are something much worse. The rapid transit of the twentieth century, hardly foreseen when game depletion first became notable, has vastly enhanced the hunter's ability to find and catch up with his swift-footed quarry. In the parklike country of South Africa, a car need not even stick to the road but can strike off almost anywhere in pursuit of a trophy;²⁵ what formerly could be accomplished only with a well planned and thoroughly equipped expedition is now possible for anybody with a car on his day off,—a sudden widening of opportunity exhilarating to all concerned.

And with the roadless aeroplane yet other vistas open. Speed, range, and mobility are increased, and you can even have the game located and driven toward the guns by flying scouts; the game has no longer any place to hide.²⁶

It is not much comfort to know that these considerations apply chiefly to the open lands. The destruction of the forest has not gone so far, to be sure, and indeed the depths of the rain forest are practically invulnerable; but these regions do not harbor much big game, which—except for the ubiquitous elephant—is mainly a feature of the open plains.

Menaced with expropriation and outright slaughter, the herds face yet another danger,—the accelerated spread of disease.²⁷

²⁵ Hone, E., *op. cit.*, p. 21.

²⁶ Mitchell, P. C., "Aeroplanes and African Fauna," 142 *Spectator*, London, p. 502, March 30, 1929. The author says that during a flight over Africa he saw in rather few hours virtually all types of large game from the air, but in many more hours wandering on the ground during repairs to the plane he saw almost nothing.

²⁷ Pitman, *op. cit.*, p. 620; and see Faunthorpe, J. C., "The Disappearance of Wild Life in India," 24 *Natural History* 204, 1924. Also *A & P*, 1906, Cd. 3189, *passim*.

The dreaded rinderpest, or cattle plague, working its way year by year up the narrow Nile valley from village to village and province to province, finally reached the South Sudan about 1890, and with terribly gathered speed swept Africa like fire, devastating the animal population from the desert to the Cape, year after year. Economic results were serious; for not only the settlers' herds suffered, but the animal wealth which constituted the whole capital of many prosperous tribes, the Masai, once the strongest nation in East Africa, being reduced to ruin.²⁸ And since the wild beasts are largely of bovine stock, they suffered with the rest, so that species once abundant to the nuisance point all but vanished in a few years.

Butchered for fun or for the market by a growing army of hunters with ever more deadly arms, driven from their homeland by fire, fence and farmstead, and weakened withal by pestilence, Africa's fauna was well along the road marked out by the bison before most of us had a notion of the fact.²⁹ The blaauwbok, perhaps never very common, became extinct before 1850,³⁰ and the quagga, a semi-striped zebra which the Boers found galloping over the Cape province in vast herds, was totally exterminated in the seventies. By our own day, the white rhinoceros, once general in Africa below the Zambesi, survived only on the little Umfolosi reserve in Natal³¹ to the number of one or two hundred, threatened with extinction owing to constant pressure on the government to abolish the reserve,—a sad picture only partly relieved by the discovery in 1908 of a related

28 *A & P*, 1906 (Cd. 3189), no. 222: Wilson to Elgin, April 4, 1906.

29 It has really been a long story; A. E. Robinson, "Extermination of the Fauna of Northeast Africa," 22 *Fauna Journal* 43, May, 1934, says that wall paintings of ancient Egypt indicate existence there of buffalo, hippo, gazelle, hartebeest, and other antelope, all long extinct in Egypt now.

30 Haagner, A. K., "Conservation of Wild Life in South Africa," *South African Journal of Industries*, December, 1926, p. 3 ff.

31 Hone, *op. cit.*, p. 25; Dollman, G., "The Peril to Africa's Big Game," 156 *Saturday Review* 463, Nov. 4, 1933.

subspecies in modest numbers to the west of the upper Nile.³² Of the bontebok, formerly common south of the Orange, a single herd survives, semidomesticated on a farm near Bredasdorp;³³ the blesbok and black wildebeest are almost as rare; the nyala was dwindling in Zululand by 1925; the southern eland remains only at the Giant's Castle in the Drakensberg; and about three hundred mountain zebra, last of the race, at a single station in the Oudtshoorn district.³⁴ The elephant is gone from South Africa except a remnant in the Addo Bush; even these were officially doomed as a nuisance just after the last war and barely saved in mid-sentence by a sudden change of the governmental mind. In Rhodesia the giraffe was down to 300 individuals in 1932, the black-footed impala to 500, the black rhinoceros (which is really brown, as is the white) to 1500, the blue wildebeest to 2000, and the hippopotamus to 3000.³⁵

Except in the most populous regions, like the Cape and the Eastern Transvaal, the smaller antelopes have survived in good numbers by dint of speed, shyness, and breeding power, while the elephant and buffalo offer a certain resistance to the native muzzle-loaders. But the picture is again darkened when one remembers that extermination can be assured without actual slaughter of every individual; it will suffice to reduce the stock till birth rate falls below natural death rate, or so to scatter the herds that the sexes can't find each other, or simply to bedevil the animals till they become restless and nervous and cease to breed, as is said to have been the bison's fate.³⁶

Why does it matter? Old-fashioned realism, recognizing in the wild game only an unproductive occupier of potentially productive land and a possible menace to crop and herd, would plainly dictate its removal, with or without a pious regret. Ad-

³² Dollman, *op. cit.*

³³ *Ibid.*

³⁴ Haagner, *op. cit.*, p. 4.

³⁵ Pitman, *op. cit.*, p. 620.

³⁶ Hornaday, W. T., quoted in *A & P*, 1906 (Cd. 3189).

vocates of preservation therefore are compelled to argue that the policy pays, and to advance proof that "civilization is not protecting animals for their good but for what it can get out of them."³⁷ But the proof of direct economic advantage is apt to be hard. In the old days much stress was laid on possible domestication, with an eye on the Indian elephant,³⁸ and the eland for example has actually been broken to harness; but the elephant has proved hard to tame and the spread of the gas engine has made all propositions for introducing new draft animals look a little quaint. There still remains a possibility of cultivating certain animals as a food supply, though never tried on any great scale as yet; and the old hope has been carried into the latest convention as will be seen.

More recently, emphasis has been less on direct use than on the tourist value of wild animals,³⁹ whether the visitor comes to hunt or simply to stare as at Kruger Park and elsewhere. It is now realized, with our growing painful experience of marginal lands, that in many areas the money collected from sportsmen and trippers is more of an asset to the community than the potential product of the land itself; Haagner reports⁴⁰ that some farmers have found game raising to outpay stock raising. If for example only a thousand people visit South Africa at a hundred pounds apiece,—and six times that visited Kruger Park alone in 1931, which was not an uncommonly good year,⁴¹ the money profit is measurable. One must remember that the visitor who comes for the game's sake spends much more than his license fee.

There is also the economic-social value of the game to the native. Just as the culture of the Plains Indians utterly col-

37 Driberg, J. H., "Tooth and Claw," 6 *New Statesman and Nation* 544, November 4, 1933.

38 Haagner, *op. cit.*, pp. 6-7. Hannibal's elephants were African.

39 Haagner and Driberg, *op. cit.*

40 *Op. cit.*, p. 7.

41 Driberg, *op. cit.*, p. 545.

lapsed with the destruction of the animal on which it wholly depended, so the future of the African community is to a degree related to the continuance of traditional conditions. If the beasts raid him, his fields and herds, they also supply food, sport, and the pattern of a familiar world whose oversudden disappearance will make more difficult than ever his adaptation to a white society. Where this has happened already, Driberg says, "the protected African is becoming rather a lizard both physically and morally."⁴²

To economic, recreational, and cultural values, add the importance of animals and animal communities to science, for the study not only of individual form and function, or of systematic position, but even more today for the investigation of relations between the various animals and plants sharing a common habitat. And finally, it is possible at last to assert openly the right of things to exist for their own sake, and the natural beauty and wonder they exemplify.⁴³

But notwithstanding this manifold argument for protection in general, any actual effort to get something done has a triple burden to bear. It means taking the active side, opposed to the status quo; it threatens a new restriction on man's right to do as he pleases; and it must deal in generalities, for even where experience indicates a public benefit, it is hard to reduce this for lobbying purposes to hard cash value terms. The opposition on the contrary can marshal an army of witnesses testifying to very specific damage suffered on account of the game, or certain to be sustained if the game is protected. Critics of the protective policy in Africa have presented every possible objection to an infringement of the right to kill. Large animals like the ele-

⁴² Driberg, *op. cit.*, p. 544. Of the economic value of African birds there can be no doubt. A quail eats a thousand locusts a day, and the increase of this pest in Africa is bound up with the destruction of their bird enemies. Other kinds important to pest control included the bustard, partridge, stork, crane, egret, starling, drongo, shrike, chat, pratincole, doves, bee-eater, roller, and the various predators. See the Haagner and Driberg articles as cited.

⁴³ The Belgian delegates advanced this civilized argument for protection at the 1933 conference. *Minutes*, 4th meeting November 1, 1933.

phant, hippo, and buffalo, which may indeed become destructive and dangerous are particularly assailed.⁴⁴ Now it is true that these creatures despoil the farmer, trample what they don't consume, and especially in the case of the buffalo, actually endanger his life; the only possible retort is, that to a great degree these beasts may be taught their place by means short of destruction. The hippopotamus, shortlegged and ungainly, can be kept out by a ditch and low wall;⁴⁵ the elephant can often be scared off for good with large fire-crackers, while if this fails, shooting the leaders is said to discourage the whole herd in a short time.⁴⁶ The recommendations of Hubback and Hawkins in respect of Malaya⁴⁷ should hold for similar conditions in Africa; they point to the preference of animals for ill-kept patches, and to the vulnerable position of scattered holdings in the jungle,—apparently much can be done to work out the adjustment by good husbandry and the planned disposition of settlement and wilderness. Naturally, the thing can be overdone; and the South African farmer beset by two hundred wildebeest who was permitted officially to shoot but three, might as well have been directly invited to take the law into his own hands.⁴⁸

The whole question of land use can be solved only by a policy of reasonable apportionment. There has been a tendency in the past to create reserves at random, in virgin territory which presently was found to lie in the path of advancing settlement, as had happened in East Africa by 1911.⁴⁹ And reserves in settled regions are apt to hold but a tenuous lease on life. Those in Natal especially exist from year to year only by good luck, although they contain some of the last remnants of a number of

44 *A & P*, 1906 (Cd. 3189), *passim*; esp. # 222, Wilson to Elgin, April 4, 1906.

45 Hobley's memorandum, *supra*, p. 23, 1933.

46 Hubback and Hawkins, pp. 72 ff.

47 *Ibid.*

48 Haagener, *op. cit.*, p. 8.

49 *A & P*, 1911 (Cd. 5775), # 14, Girouard to Col. Off., January 18, 1911.

species.⁵⁰ In this matter there is always that conflict of general and local interests, taking the form of a contest between the colonial office and the man on the spot, and running through sheaves of official correspondence on Africa.

Large commercial interests devoted to the exploitation of nature, which throw so vast a shadow across our efforts to conserve forests, fisheries, and fur-bearing animals, are not important in Africa. But there is one vested interest which must be reckoned with,—the ancient rights of the natives themselves, especially in regions of fairly dense population like Nigeria and Uganda. The former is rather poor in big game, but the latter is extremely rich; and its governor was significantly swift to warn the home government against encroachment when the question of protection first appeared.⁵¹ Again in 1908 Governor Bull peremptorily removed the buffalo from the protected list without consulting London. The creatures, he said, were increasing in numbers and doing more and more damage, in three years, with some aid from the elephant, they killed a hundred people in Uganda and Toro while losing but thirty-five of their own number, and the natives could stand it no longer. The lot of the beast should be a bounty on his head, not protection,⁵² said the governor.

Well, what can one say? Of course the human population comes first and its right must in such case be safe-guarded even though we cast an anxious look at the possibilities of abuse, and of undoing all the protective work accomplished to date.

Peculiarly vexing has been the question whether game is a reservoir for cattle disease. Most of tropical Africa is region-

50 Brouwer, G. A., "Organization of Nature Protection in the Various Countries" (ACIWLP 9), p. 83: "Still the situation in the Union is not as favorable as it might appear from the above data. The materialistic mentality and the speculative inclinations of a great sector of the population furnish a good many difficult problems to the advocates of nature protection. Sabotage within the protected areas is characteristic of the situation and the position of several games reserves is for a large part uncertain" (1931).

51 *A & P*, 1906 (Cd. 3189), # # 222 and 225, 1906.

52 *A & P*, 1909 (Cd. 4472), # 43, Bull to Elgin, January 21, 1908.

ally infested with some species of tsetse fly (*Glossina*) which harbors the germs of some variety of sleeping sickness, a terrible scourge falling on man and animals alike. As early as 1896⁵³ the South African settlers complained to the home government that game harbored the disease and that it spread thence not only to their cattle but to themselves. This started a controversy which raged only less fiercely than the pestilence, with the weight of medical evidence denying the charge, but recommending—not very helpfully—the impounding of game in reserves remote from the water's edge.⁵⁴ In 1911 the harassed government decided to try out the extermination of game in a limited sector of Nyasaland,⁵⁵ and see whether the fly departed, but like many experiments it failed to prove anything and was abandoned. The problem remained.

In the absence of anything definite, the agitation against the game continues to go up and down with the course of the disease. Under the latest available findings⁵⁶ the game escapes with a Scotch verdict in the matter of the human disease, but is believed indeed to harbor the bovine version, which seems plausible in the light of their close biological affinity. This is too bad, but two other questions ought to be answered before the game is doomed on this account. Does it follow that extermination will wipe out the pest? It is uncertain whether the fly varies in abundance with the game, and rather recent information⁵⁷ indi-

53 *A & P*, 1906 (Cd. 3189), # 5, Oct. 8, 1896.

54 Bruce and Austen, top flight experts, exonerated the game; see *A & P*, 1910 (Cd. 5136), # 34, also *A & P*, 1911 (Cd. 5775), ## 21 & 24. A band of Scotch missionaries zealously took the other side (*A & P*, 1911, ## 13 & 19), calling the victims of trypanosomiasis martyrs to the foolish policy of game protection, and bidding the Fauna Society come and be experimented on if they felt otherwise. The offer was not accepted.

55 *A & P*, 1913 (Cd. 6671), ## 2 & 4, June 10, and August 11, 1911.

56 Strong, R. P., *et al.*, "Report on the Available Evidence showing the Relation of Game to Tsetse Fly Borne Diseases in Africa," ACIWLP, publ. # 1, New York, 1931.

57 Barbour, T., and Porter, M. D., "Notes on South African Wild Life Conservation, Parks and Reserves" (ACIWLP, # 7), New York, 1935, p. 9.

cates that birds, small animals, and even the latex of certain plants may serve as hosts, in which case game-killing would solve nothing. Secondly, is not the game, in some regions, worth more than cattle?⁵⁸ If this be granted, then the cattle, not the game, in those regions, should go; and we are back as we so often are to the question of balancing interests. Sometimes the remedy is removal of a village, or the consolidation of villages; sometimes the game must be reduced,—but then look out for overshooting; sometimes fly-trapping has worked pretty well. Indiscriminate slaughter under government authority, as occurred in the Umfolosi some years ago,⁵⁹ is always to be discouraged.

We have dealt with objections to protection on the ground of human rights; there are also, as suggested above, what might be called administrative objections. Governments are reluctant to act unless all others act too, for fear of losing business and the tourist trade to other and less scrupulous countries.⁶⁰ Colonial budgets are apt to be balanced precariously if at all, and a policy which threatens to substitute expense for revenue will be eyed with disfavor. It tends therefore to become a matter of the mother country doing for the colonies as a whole what they cannot or will not do individually,⁶¹ and this as we all know must be done cautiously and without arousing provincial resentment, which would destroy the whole program. It is correspondingly a matter of getting the money out of the home taxpayer, and this also is not popular; but there is no escape from the policy, since colonial ability to pay bears no necessary relation to the size of the problem, and as a matter of fact Nigeria was receiving grants in aid for this purpose before 1905.⁶²

⁵⁸ *Ibid.* and see Pitman, *op. cit.*, p. 621.

⁵⁹ See 1 *Fauna Journal*, p. 15, 1921, editorial.

⁶⁰ *A & P*, 1910 (Cd. 5136), # 5, January 30, 1909, Foreign Office to Colonial office on reluctance of Germany and Portugal to ratify the Convention of 1900.

⁶¹ *A & P*, 1906 (Cd. 3189), # 181, February 2, 1905, plea of Fauna Society for metropolitan action, citing United States federal aid policy.

⁶² *A & P*, 1906 (Cd. 3189), # 181, at p. 254.

The unwillingness of a single government to act alone for fear of loss is even greater when separate mother-countries as well as separate colonies are involved; and this brings us at last to the beginnings of *international* regulation. At the century's turn, six European powers were involved in the problem. As two-thirds of the game, however, lived under British administration, it was natural that Sir Clement Hill, an Englishman, should first propose action⁶³ and that Her Majesty's Government should lift the protection question to the international level. It was Lord Salisbury himself who sounded the colonial administration on the destruction of wild life and the adequacy of existing regulation, in hope of getting the cooperation of other nations, and who in 1897 addressed the German government on the possibility of an international prohibition of small-ivory export.⁶⁴ The Germans were favorable, and the ensuing correspondence brought out a striking difference in the protective methods of the two nations. The British relied chiefly on the game-law system, charging up to £25 annually for a hunting license and taxing any ivory or horn taken, with a penalty for unlicensed hunting, violation of the closed season, or killing of protected species. The Germans relied primarily on special sanctuaries, in which hunting should at all times be limited or forbidden. The British were inclined to deprecate this principle, on the ground that a sanctuary big enough to do any good was too big to police; and it is therefore interesting to note here that the German system was the foundation of the protective legislation at last achieved in 1933.

The correspondence grew till the original plan expanded to a grand proposal for a general conference on game protection. On April 4, 1899, the British circulated to all relevant capitals⁶⁵ the following general propositions: complete protection for ani-

63 Johnston, H. H., "The Preservation of the African Fauna and its Relation to Tropical Diseases," 88 *Nature* 178, 179, Dec. 7, 1911.

64 *A & P*, 1906 (Cd. 3189), # 1 *et seq.*

65 *Ibid.*, # 33, 41, 1899.

mals under a year old and for females with young, the creation of reserves, the restriction of trade in hides, horns, or ivory, an absolute ban on tusks under ten pounds and a high duty on those under thirty, a ban likewise on fishing with dynamite or poison, the imposition of closed seasons, licensing of both Europeans and natives, and a tightening up of the Brussels Convention on arms. Only the lands between the Desert and the Zambesi, and the island of Madagascar, were to be affected. The governments involved accepted the idea after a decent interval, and a conference met at London in the following spring.⁶⁶ From the start there were disquieting reservations. France looked suspiciously at any restriction on trade and objected to the inclusion of Madagascar, which was entirely hers,⁶⁷ while Belgium hastened to point out the doubtful compatibility of tariff and trade restrictions with the Acts which created the Congo Free State.⁶⁸

However, on May 19, 1900, a convention was actually signed, wherein seven powers, in the name of God the All-powerful, expressed their wish to prevent the uncontrolled slaughter and insure the preservation of the various species of animals, useful or harmless, in their domains.⁶⁹ The first article applied the convention to the lands between 20° N. and the North boundary of Southwest Africa produced to the Indian Ocean along the Zambesi; this included the treasure of East Africa, but evidently excluded the whole Mediterranean region, Southern Rhodesia, and what is now the South African Union as well as Madagascar, while Ethiopia, though within the zone, was not a party.

Article two is a list of recommendations. It declares the most efficacious measures to be (1, 4) the protection, absolute or qualified, of certain animals, or the females or young only, on

⁶⁶ *Ibid.*, # 55.

⁶⁷ *Ibid.*, # 47.

⁶⁸ *Ibid.*, # 42, XX, December 5, 1899.

⁶⁹ Martens, *Nouveau recueil général des traités*, 2me, XXX, 430.

successive appended schedules,⁷⁰ (2) the creation of reserves adequately supplied with food, water, salt, and peace, in which killing should be by permit only, (3) the establishment of closed seasons, (7) the requirement of licenses, (8) the prohibition of netting, trapping or (9) taking of fish with explosives or poison, (10) the requirement of permits for the export of the products of certain species, (11) the prohibition of killing young elephants under severe penalties, (12) the taking of measures to prevent epizootics spreading to tame animals, (13) the reduction of species listed in schedule 5,⁷¹ (14) the protection of ostrich eggs, and (15) the destruction of eggs of the crocodile, python, or poisonous snakes. These comprehensive proposals will be seen to cover pretty well every principle on which preservation could be based.

By article three, the powers bound themselves to put these efficacious measures into effect within a year of the convention's coming into force, subject to reservations, however, with respect to protection of the scheduled species, the creation of reserves, or the protection of fish, if demanded by the interests of science, the "higher interests of administration," or difficulties of organization—which could mean anything.

By article four, measures will be taken to encourage domestication of the elephant, zebra, ostrich, and so on. The rest of the instrument is formal, providing for modification on unanimous consent, adherence by notice to Great Britain, coming into force

70 Schedule 1 (complete protection) : vulture, secretary bird, owls, oxpecker, giraffe, gorilla, chimpanzee, mountain zebra, wild ass, black wildebeest, eland, pygmy hippo. Schedules 2 and 3 (female and young) elephant, rhinoceros, hippopotamus, all other zebras, antelope, gazelle, buffalo, ibex, musk deer. Schedule 4 (limited protection only) : the foregoing plus wild boar, colobus and furred monkeys, other small monkeys, anteaters, dugong, manatee, the small cats, serval, cheetah, jackal, aardwolf, ostrich, marabou, egret, bustard, partridge, guinea fowl and other game birds, and the giant tortoise. Not all these animals occur in Africa.

71 Schedule 5 : lion, leopard, hyena, wild dog, otter, baboon, other dangerous monkeys, large birds of prey except as per other schedules, crocodiles, poisonous snakes, and pythons.

one month after ratifications deposited in London, and for a life of fifteen years and then until denounced.⁷²

In sum, the convention provides with respect to a certain part of Africa, for the protection of many species in certain listed ways, for the reduction of other species, and for the domestication of animals. Two theoretical criticisms may be made: first, the overrated possibilities of domestication; second and more important, the stigmatizing of certain animals as noxious. Are any animals necessarily noxious? The action of the powers opened the way to reckless war on the unlucky members of Schedule Five, which move disturbed the Fauna Society at the time and has been more recently abandoned as a policy.⁷³ Thirty years later, the rapid increase of the baboon and wild pig in Tanganyika, with resulting damage to agriculture, is ascribed by the game department to overtrapping of the leopard,—an instance of the modern commonplace that the beast of prey plays a valuable part in the always uncertain balance of nature.

The commitments of the signatories are on their face pretty sweeping, despite the elastic clause at the end of Article Three. Unfortunately we learn from the report of the British plenipotentiaries⁷⁴ that in reality more was reserved than meets the eye, each power expressly retaining complete freedom as to actual administrative measures to be applied and warning of its intent to permit the least possible interference with commerce. The Portuguese proclaimed that they would not ratify until the British and other administrations south of the Zambesi should accede to the convention; the French held back until states within the zone but not parties to the convention should do so. Since these states were Ethiopia and Liberia, one suspects that the French had no great expectation of having to deliver, in spite of a nominal obligation.

⁷² Convention, articles 5-10 inclusive.

⁷³ Driberg, *op. cit.*, p. 544.

⁷⁴ *A & P*, 1906 (Cd. 3189), # 56, memo to Salisbury, May 21, 1900.

As a matter of fact, for all its conservative tone and pious invocation, the convention never took effect. It would be unfair, however, to write off this first try at international action as a total failure. The British applied a good deal of it in the colonial domain, and laid much unction to themselves for doing so; ⁷⁵ a ten pound minimum was imposed on ivory for export and the Germans imposed a corresponding one of five kilograms in their East African lands. Mr. Joseph Chamberlain sent a copy of the British regulations to Lord Milner in South Africa with his blessing. ⁷⁶ His Lordship's failure to pay much attention may perhaps be forgiven in view of the contemporary situation. The Cape Province refused to apply the new rules until the Portuguese did ⁷⁷ and we have already noted that these people took the converse position, so that an impasse was reached. Portugal did recommend that the local officials proceed along Convention lines ⁷⁸ and this may have done some good, but the Portuguese colonial administration is notoriously flimsy. Italy adopted a new code conforming to the convention in 1906. ⁷⁹ The French stubbornly refused to recede from their offishness though rather plaintively urged to cooperate; ⁸⁰ and the Congo State, which actually ratified, refused to consider itself bound till everyone did. ⁸¹ As late as 1908 the British colonial office was still hopeful; Lord Crewe urged on the foreign office and argued that almost any agreement would be preferable to "the present chaotic state of affairs." ⁸² Unhappily, the other signatories would not admit that the situation was chaotic, but instead pointed with pride to their own records of game protection. Then silence fell.

⁷⁵ Especially in the south and east; *A & P*, 1906, # # 89, 92, 94.

⁷⁶ *A & P*, 1906, # 69, July 21, 1900.

⁷⁷ *A & P*, 1910, # 2, High Commissioner to Secretary, November 30, 1908.

⁷⁸ *Ibid.*, # 5, Foreign Office to Colonial Office, January 30, 1909.

⁷⁹ *A & P*, 1909, # 24, Foreign Office to Colonial Office, 1906.

⁸⁰ *A & P*, 1906, # 144, July 24, 1903.

⁸¹ *A & P*, 1910, # 1, Foreign Office to Colonial Office, September 22, 1908.

⁸² *Ibid.*, # 3, Colonial Office to Foreign Office, November 24, 1908.

Whether the partial application of the London rules did much good may be doubted, for it is plain that the metropolitan governments were not much interested; and where regulations are not vigilantly kept up to date they are pretty sure to be overtaken by improved killing techniques, increasing population, and growing use of land. The small number of complaints lodged by the colonies against the protective policy is itself a bad sign, and there is no instance of a colonial authority stiffening the law at the expense of its own economic interest. On the contrary, Uganda refused to protect the buffalo, and complained loudly of the damage done by elephants.⁸³ Despite the general adoption of a minimum ivory standard and the plugging of the Zanzibar gap in 1904,⁸⁴ the elephant massacre went on. The Germans report⁸⁵ the killing of over thirteen hundred undersized animals within two years of the five kilogram law and ascribe the declining ivory export—probably correctly—more to depletion than enforcement. Governor Denton of the Gambia flatly refused to cooperate, saying the colony could not stand the loss, and the Governor of Uganda pressed the same argument,⁸⁶ though enthusiastic over the idea as applied to the East Africa protectorate. And so, in 1910, over fifteen percent of the ivory sold at London was under twenty-five pounds, and a fair fraction of that under fourteen; the Fauna Society perennially urged a general limit of at least twenty-five pounds, for even a baby's tusks weigh as much as ten, but the years passed and a world war come and went, and no impression was made.⁸⁷

83 *A & P*, 1909, # 43, Bull to Elgin, Jan. 21, 1908.

84 *A & P*, 1906, # 151, Eliot to Lansdowne, Aug. 8, 1903. Menelik promised to stop the smuggling via Ethiopia but, of course, couldn't and didn't.

85 *Ibid.*, # 160, 164, Oct. 31, 1903 & Jan. 6, 1904; and see # 171, May 10, 1914.

86 *A & P*, 1909, # 50, Colonial Office to Fauna Society, June 3, 1908.

87 *A & P*, 1910, # 7, February 26, 1909; in this year Uganda exported ivory valued at £61,497, East Africa 15,820, German Africa about 60,000, Nyasa about 11,000, all West Africa about 25,000.

As to the other proposals, licenses were commonly required as had been the case before; but the fees were generally low and the money not always spent on game protection.⁸⁸ Two reserves were set up in East Africa (now Kenya) in 1900⁸⁹ but the larger was thrown open to natives as well as animals, who with their guns and cattle destroyed much of its value for wild life. Uganda, despite the official attitude on ivory, laid out six reserves and Nyasa two, while the German government created no less than eleven to which Britain fell heir in 1919; but apparently most if not all of these were open to criticism as lacking in scientific basis, and either too small for the game or too big to patrol.⁹⁰

The war of 1914 abruptly arrested European interest in protection, and for fifteen years thereafter little seems to have been done. The direct effect of hostilities was small, the only evidence we find having been some overshooting in Northern Rhodesia, apparently in fear of a food shortage,⁹¹ but the older dangers continued and increased. In the decade which followed the armistice the time of statesmen was captured by major problems of human reconstruction, and the field to which our study is directed was accordingly shelved till the thirties, or about the time that the major problems began to prove insoluble. The interim period was, however, marked by a proliferation of international committees of many kinds which presently here as elsewhere succeeded in making their voices heard.

And so in July 1931 the Paris meeting of the International Congress for the Protection of Nature, in the presence of Mr. Ramsay MacDonald,⁹² resolved that a new conference on Africa was due, which should deal with the trophy trade including ivory, limit hunting with cars, planes, and certain other de-

88 *A & P*, 1906, # 181, February 2, 1905.

89 Hobley, C. W., 20 *Fauna Journal N. S.* 33 at p. 34 ff, 1933.

90 Hone, E., *op. cit.*, p. 21 ff.

91 Pitman, *op. cit.*, p. 621.

92 Note in 15 *Fauna Journal N. S.*, p. 47, 1931.

vices, and provide for the establishment of national parks and reserves. With high places thus interested at last, the idea caught, and the preparation of a draft convention was assumed by His Majesty's Government through the influence of notable friends of wild life, including Lord Onslow, who was also chairman of committees of the House of Lords,⁹³ and Sir William Gowers, long a colonial administrator and now crown agent for the colonies. This merging of official position and technical knowledge in the nation with most at stake in the problem was signally fortunate.

A further encouraging step was taken in 1932, when the British and Italian governments formally agreed to cooperate in the suppression of ivory smuggling.⁹⁴ This first international agreement on the subject restricted the import of ivory and horn to certain specific points, and required that it be accompanied by official certificates, on pain of confiscation and prosecution. To short-circuit the old excuse that it was taken over the border, ivory coming into Italian territory from Ethiopia was to be subject to the same limitations of weight as though it had originated in Somaliland, until such time as Ethiopia should enter a like undertaking. The consulate at Nairobi was made the central office for exchange of information about violations. But this stopgap by no means disposed of the ivory question as we shall see.

The conference met. The representatives of ten powers were welcomed to London by Lord Plymouth on October 31, 1933, and all signed the Convention a week later except the Ethiopian delegate, whose powers turned out to be imperfect.⁹⁵ The gathering convened in the Moses Room of the House of Lords under Onslow's chairmanship proved uncommonly well-chosen,⁹⁶

⁹³ *The Field*, October 21, 1933, p. 1022.

⁹⁴ *League of Nations Treaty Series* (hereafter referred to as *L.N.T.S.*) 3136, Exchange of Notes between Great Britain and Italy, November 26, 1932.

⁹⁵ *Minutes*, 4th meeting, November 1, 1933.

⁹⁶ See list of plenipotentiaries, Convention, 1933, Appendix I.

including at least six colonial administrators, as many eminent biologists, and four persons of ambassadorial or other high political rank, so that knowledge of the problem and governmental power,—elements both essential to successful negotiation—were admirably combined. Observers were also present from India, the Netherlands, and the United States.⁹⁷ Constituted as it was, the conference disposed of its complex task with commendable dispatch and skill, in the end adopting most of the British draft with its emphasis on five fundamentals; parks and reserves, protection of rare species, control of the ivory trade, limitation of weapons, and provision for mutual consultation.

Article one has two principal parts. The first applies the convention, unlike that of 1900, to *all* Africa, with Madagascar and Zanzibar. The second contemplates its extension to other territories, even to those not colonial; that is, an effort is being made to forecast a general system of international protection in which Africa shall be incidental only. This has not been followed up, but the precedent may yet be useful and is worth careful notation by the student of legislation. The next five articles indicate the complete conversion of the British to the sanctuary principle they once thought so little of. Mr. Te Water spoke of the impossible task of a warden set to patrol an entire jurisdiction in search of game law infractions, and of the necessity of limiting patrolled areas to manageable size.⁹⁸ This point of view met with general agreement, and the debate was wholly on the question of what a reserve ought to be. On this there were many minds.

The British conceived of a "national park"—a term borrowed from the United States—as a piece of public land to which public entry for recreation and observation was facilitated, but wherein fauna and flora were preserved in a natural

⁹⁷ We were represented by John C. Phillips, a distinguished conservationist and brother of ambassador William Phillips; the Netherlands by P. G. Van Tienhoven, likewise eminent in the field.

⁹⁸ *Minutes*, first meeting, October 31, 1933.

state and no hunting was allowed; a "reserve" they envisioned merely as a preparatory stage, or sort of tentative park.⁹⁹ The French and Portuguese, to whom a park means a place where lawns are mowed and beds weeded, felt a contradiction between free public access and the preservation of anything in its natural state.¹⁰⁰ M. Charles of Belgium took a similar attitude. As a result of these conflicting views, a third category, the "strict natural reserve," was introduced, denoting an area immune not only to hunting and fishing, but to human exploitation or alteration of any kind, and which might not even be entered except by special permission.¹⁰¹ A national park became simply a reserve closed to hunting, wherein the public should have every opportunity of observation. Te Water, knowing well the South African administrator's temptation to abolish reserves once created, urged and carried an amendment expressly making park boundaries unalterable save by legislation.¹⁰²

Whereas the 1900 convention had imposed an obligation to act within a year, Article three of the present one is no more than a gentleman's agreement to perform. The governments will "explore forthwith" the possibility of parks and strict natural reserves, but bind themselves to the actual selection and development of sites only if the going seems to be good.¹⁰³ This relaxation in favor of more probable ratification was suggested by the British themselves.¹⁰⁴

The fourth article recommends certain administrative steps to be taken: the inclusion of enough land to cover the normal wandering of the animals, the establishment of zones round about in which hunting should be under control of the park authorities, and the control of native settlement in reserved

99 *Minutes*, third meeting, November 1, 1933.

100 *Minutes*, third meeting, November 1, 1933.

101 *Minutes*, fourth meeting, November 1, 1933.

102 *Minutes*, fourth meeting, November 1, 1933.

103 Convention, article 3, section two.

104 Sir William Gowers, at the fourth meeting.

areas to prevent disturbance of the wild life,—but it was unanimously resolved to leave to each government the ticklish question of just what these control measures ought to be. The South African delegates were troubled by fear that buffer zones might become informal extensions of the park itself,¹⁰⁵ but were reconciled by the clause denying damages to persons taking up land in the zone after a certain date and therefore by inference granting them to present landholders there.

With Article five we come to the question of a central administrative organ. The British draft contemplated using the British government itself in this capacity, as an agent for receiving official information upon the establishment of parks and reserves and the administration thereof, and for circulating such news among the other signatories. But the French proposed something more formal, a permanent committee¹⁰⁶ to weigh measures taken, classify information, study statistics, and make recommendations,—that is, a standing body of experts to keep up interest and activity at all times. Portugal and Spain backed this move for a more definitive organization; but it failed in the end, essentially, it seems, because of a certain rivalry. Mr. Van Tienhoven, perhaps too eagerly, urged that instead of creating a new committee they vest the suggested function in the Brussels Bureau for Nature Protection (of which he was himself a member).¹⁰⁷ The Belgians thought this a fine idea, but the French somewhat stiffly replied that this was merely a private institution,—and if merits of existing bureaux were being considered, what of the Conseil International de la Chasse? The British calmed this incipient controversy by warmly approving the idea of a commission but moving against its immediate acceptance because of the early and untried state of affairs. This conservative counsel prevailed. Those who had backed the plan,

105 *Minutes*, third meeting, November 1, 1933.

106 *Minutes*, fifth meeting, November 2, 1933.

107 *Ibid.*

however, felt that the clearing agent should listen to expert organizations as well as governments; and an amendment proposed by South Africa was accepted authorizing the British government to hear information contributed by national museums or by societies national or international established for relevant purposes and existing in the signatory states. Here the line was drawn, to provide some protection to the Foreign and Colonial Offices against floods of crank mail.

Article six enjoins prior consultation between signatories where a park is to be created on the boundary between them, and cooperation after establishment. This very necessary article was enthusiastically adopted.¹⁰⁸

All these articles are much more persuasive than mandatory. Article seven is an attempt to insure that *something* will be done, whether the powers ever create full dress sanctuaries or not, again avoiding the mistake of 1900, which was to demand too much, too vaguely. The parties agree to establish in each of their territories *ordinary* reserves,—that is, areas in which hunting is prohibited except by special permit and the vegetation is also protected so far as possible, and to inform the other powers of their action. These reserves may be altered by administrative order, while national parks require a special act, and entry upon and use of land is not so strictly regulated as in strict natural reserves. The creation of special reserves for the benefit of particular species is also recommended.¹⁰⁹ Some anxiety was caused by the permit loophole in section one, which was therefore carefully drawn to allow the issue of such only for scientific or administrative purposes or for the protection of life or property.

The Portuguese offered certain amendments, mostly directed to the preservation of the natural forest;¹¹⁰ and these were

108 *Minutes*, fourth session, November 1, 1933.

109 Convention, art. 7, section 3. There are then four classes of reserve, or sanctuary: national park, strict natural reserve, ordinary reserve, and special reserve.

110 *Minutes*, fifth and sixth session, November 2, 1933.

partly incorporated by means of a provision that the powers would do their best to preserve a degree sufficient of the forest, especially of the best indigenous species, and would be careful about introducing foreign forms,—a practice already proved disastrous in many parts of the world.¹¹¹ In order to further the study of forestry, the parties agreed to establish the closest possible cooperation between the qualified authorities.¹¹² An amendment reminiscent of 1900, to encourage the domestication of animals, was also adopted;¹¹³ and the Portuguese would have liked to abolish bush fires and replace nomadic by stable agriculture, but here the company demurred. The British thought it impossible to make fires wholly illegal, pointing out their use in certain types of fly control, and hesitated to turn a convention about animals into a commitment to resettle all the wandering tribes of Africa.¹¹⁴ As in the fourth article, the native proved something of an uninvited guest, and the vital question of his relation to the game was passed lightly by rather than solved in any great detail.

With Article eight we leave reserves at last and take up the problem of specific protection. The unwieldy schedules of the first convention, which sought to enumerate practically everything both useful and noxious, are replaced by two lists, one of animals in great need, to be taken only by permission of the highest authority to further important scientific or administrative purposes, the second containing animals in slightly less danger, but even so to be taken only under special license limited as to time and area of taking. A special technical committee drew up the lists¹¹⁵ and its findings were adopted without much

111 Convention, art. 7, section 5.

112 *Ibid.*, section 6.

113 Convention, art. 7, section 8.

114 *Minutes*, fifth and sixth sessions. It is common practice in tropic lands for native tribes to clear off a tract by fire, till it a few years, then move on and repeat ad lib; this is the connection between fires and nomadism.

115 *Minutes*, second session, October 31, 1933.

debate.¹¹⁶ Schedule A includes seventeen mammals, three birds, and one plant; Schedule B thirteen mammals and nine birds, the elephant being on the first or second list according to the weight of his tusks. The original intent was to list only animals occurring in more than one jurisdiction¹¹⁷ but in the end some of highly local distribution (the lemurs, okapi, and giant sable antelope) were put in to impress the local authorities. Each government was permitted to vary the list, but only in the direction of greater stringency.

This would have been a splendid article had it not been for the inclusion of sections 2 and 5, which bring the native in again, with his traditional hunting right. Unlike the North American treaties, which protect such rights in respect of seal, whale, or salmon only so long as ancient methods are used, these clauses are general, and not even limited to certain areas as originally planned.¹¹⁸ Accordingly, section one becomes no protection at all where a vested right can be claimed, or where the administration finds a threat to life and property, or a possibility of famine or disease. Does not this toss the power of life and death right back to the local official, whose inadequacy as a game warden has been so much complained of? Mr. Te Water thought so, but Mr. Mothercountry invoked against him the

116 *Ibid.*, tenth session, November 6, 1933. But the aardvark was taken off the list; he is a queer looker, systematically unique, and lives on termites, but he digs holes in both cattle ranges and tennis courts and thus alienates all social classes.

Schedule A: gorilla, all lemurs, aardwolf, fossa, giant sable antelope, nyala, mountain nyala, okapi, Barbary stag, pygmy hippo, mountain zebra, wild ass; white rhinoceros, northern hartebeest, Abyssinian ibex, elephant with tusks under five kilos, water chevrotain, whaleheaded stork, bald-headed ibis, white-breasted guinea fowl, and the plant Welwitschia.

Schedule B: chimpanzee, colobus monkey, giant eland, giraffe, black wildebeest, yellow-backed duiker, Jentink's duiker, beira, Clarke's gazelle, bontebok, black rhinoceros, elephant, pangolin, marabou, Abyssinian ground hornbill, another ground hornbill, ostrich, secretary bird, little egret, great white egret, yellow-billed egret, buff-backed heron. Convention, 1933 Annex.

117 See Caldwell, K. on the conference, 22 *Fauna Journal* 49, May, 1934.

118 See draft convention, article 8, section 2.

sacred treaties of long standing, which could not be infringed.¹¹⁹ The result if inescapable was certainly unfortunate.

In Article nine we collide with the ivory question, about which so little had been done for so long. There is even a hint that nothing would have been done even now had not the price of ivory fallen so low as almost to ruin the business.¹²⁰ The draft article defined "trophy" as any animal or part of one found on the schedules, and bound each government to regulate the traffic therein, requiring a certificate for export, conditioned on lawful taking, and forbidding import unless the same certificate could be shown. Ivory in particular was to be officially marked, and the mark and weight to be included in the certificate, while other trophies were to be described as accurately as possible; and *ivory or any other trophy of an animal found dead, accidentally killed, or killed in self-defense was to become government property*.¹²¹

Italy promptly objected. The traditional premium system whereby the finder was well paid for his tusks and the government was then free to sell at the market was firmly entrenched and said to work well. Should it be forsaken in favor of having the native bring in the ivory for nothing (i. e., not bring it in at all, and lose us all that income?) If there was any abuse of the system, that was the fault of Ethiopia.¹²² Gowers tried but failed to convince the conference that the flood of "found ivory" could only be dammed by abolishing premiums, and the sixth section was accordingly slain by adding the words "in principle" after "government property",—a technical phrase well understood by all diplomats.¹²³ The Italians also asked and got assurance that articles made out of ivory were not trophies¹²⁴ and objected to confiscation of illegal trophies as too severe a

119 *Minutes*, tenth session, November 6, 1933.

120 *Boston Herald*, October 22, 1933.

121 Draft convention, article 9, section 6.

122 *Minutes*, sixth session, November 2, 1933. What is the reader's estimate of the 1932 agreement's efficacy?

123 *Ibid.*

124 *Ibid.*

penalty. At the suggestion of France, the wording was changed to "such penalties as [the government] think necessary".¹²⁵ The article was thus crippled at three points, but two advantageous changes were made; rhinoceros horn was added to ivory, and the governments agreed to instruct their customs officials in natural history, to aid them in their duties connected with export and import.

Article ten brings in a fourth protective method,—the regulation of hunting equipment. It forbids the use of motor cars or aircraft either for conveying the hunter within range of game or for driving game for any purpose whatever, though reserving a landowner's right to use these instruments on his own property in respect of animals not otherwise protected. There was some talk of imposing a minimum altitude for planes, but the cautious view prevailed that aeronautical legislation was not relevant to a game convention.¹²⁶ The second section prohibits building of fires to surround animals; governments were willing to go this far though not to stop bush fires altogether even though wild life is incidentally destroyed. Barred likewise are poison, explosives, flares, nets, and traps "wherever possible." The categorical form proved impossible to get, but at least the delegates approved the maxim that animals should be taken in fair fight and one by one.¹²⁷

And lest the foregoing seem not cautious enough, the eleventh article of the draft let any government on signing make any reservations it might consider essential, while the final form admitted still greater latitude by adding ratification or adherence as times for reservation.¹²⁸

The rest of the convention deals with application and technicalities, and may be briefly covered. Article twelve provides for cooperation in general and the giving and circulating of infor-

¹²⁵ *Ibid.*

¹²⁶ *Minutes*, seventh and eleventh sessions, November 3 and 6, 1933.

¹²⁷ *Ibid.*

¹²⁸ *Ibid.*

mation. Fifteen makes both French and English texts authoritative and leaves the convention open for signing to the end of March, after which other governments may accede (Art. 17). Ratifications are to be deposited with the British government (Art. 16), and the convention to come into force three months after four states have ratified or adhered (Art. 18).

Article 13 is really complementary to Article 1; it allows a government at any time, by declaration and notification, to apply either the whole convention or the trophy trade clauses (Art. 9, sections 3, 8, 9) only to any other of its territories, and to withdraw such extension upon due notice. Article 14 excludes participation of governments having no relevant territory; the British always like to limit business to real parties in interest.

Finally, by Article 19, a state may withdraw upon a year's notice after the convention has been in force five years, and if less than four faithful remain, the whole convention dies.

No one, of course, pretended that the job was complete; even the first draft contemplated a second meeting,¹²⁹ and lest this proviso be lost if the convention as a whole failed of ratification, a separate protocol was signed¹³⁰ containing the promise of periodic international conferences to facilitate cooperation and examine the working of the convention. The first was to be held under British auspices in four years, and even the agenda were forecast; they were to include the question of exchanging lists of persons known to be persistently guilty of violating the game laws, and of information regarding diseases capable of threatening the game or of affecting men as well as animals. The delegates took tea with the Prince of Wales and the conference was over. All the signatories but two ratified in due course, and the convention became a matter of law.¹³¹

129 Draft convention, article 12.

130 172 *L.N.T.S.* 242, protocol, 1933.

131 Convention, 172 *L.N.T.S.* 242. Signed November 8, 1933; ratified by Egypt Feb. 21, 1935, Great Britain April 9, 1935; Belgium July 22, 1935; Sudan, Oct. 3, 1935; South Africa Nov. 19, 1935, Italy June 4, 1936, France May 31, 1938. Convention in force Jan. 14, 1936. Adhered to by India for Art. 9, sections 3, 8, 9, Aug. 9, 1939. See ACIWLP, pub. 10, N. Y., 1940.

So it was at least a lawyers' success; now what was really accomplished? From the instrument itself we can see that some things were not even legislated upon; the history of years since 1933 shows, though to an imperfect degree, the performance of the international promise and its results. The failure of 1900 suggests a few lessons learned; at that time the prize was new, the rulers inexperienced, the first flower of exploitation in full bloom, and the chief interested party actually at war; no body clearly saw what was needed or even what he wanted to do. The lawmakers, vaguely anxious and feeling that at least a gesture must be made, took refuge in broad commitments which were applied rather sparingly and at random. The present convention rests upon thirty more years of knowledge, both of administration and of nature; certain things are clearly seen and clearly prescribed for. The creation of sanctuaries, the special protection of rare animals, the regulation of commerce in trophies, and the limitation of weapons: here are four guideposts for the instruction of colonial governments, each of whom must take action.

Experience and tact are the real difference between 1900 and 1933. Much personal credit seems due to Lord Onslow for getting the thing through; by his skilful use of the moderator's position he did much to restore order when debate on "parks" versus "reserves" threatened to disrupt the conference or divert it into mere verbalisms, and to compose the embarrassments and hurt feelings which gathered about the permanent committee question.⁸³²

Of course it is still all very cautious. That ever recurring note of reserve, the despair of naturalists and to the laity a source of puzzled amusement, will be recognized as sadly necessary by students of the art of the possible. Rare is the international mandate that successfully exacts a change in things as they are unless somewhere it whispers in the governor's ear, "You don't really have to unless you want to." Most sovereign of rights is

the right to choose; compliance or evasion is dictated less by the law itself than by the question whether the sovereign is already persuaded of the rightness of the course and waiting only the mandate to set him going.

Yet recognizing these things, making due allowance for gaps and imperfections and with all gratitude for what was accomplished, we must still regret that some things did not work out better. There is still no real obligation to establish permanent reserves; time that might better have been spent on this was lost in Anglo-French arguments over definition.¹³³ There is no standing commission to keep the great garden that is Africa in order between conferences,—you have a board of directors but no management. The sweeping reservation of native hunting rights—necessary or no—threatens to annihilate all value of the protected lists in regions where these rights are extensive,—the Sudan for example allows unlimited elephant killing.¹³⁴ The insertion of the fatal words “in principle” in the trophy section nullifies for practical purposes the whole attempt to wipe out the found ivory racket, and greatly reduces the value of the export-import clauses. Phillips further notes¹³⁵ that since the clause on trophy imports is not specifically applicable to home territory there would seem to be no possibility of confiscating an illegal trophy once it gets out of Africa, except by gratuitous additional legislation.¹³⁶ The condition “wherever possible” attached to Article ten has caused some confusion; evidently introduced to admit local variance in the light of native customs, it is feared by some¹³⁷ to be capable of an opposite interpretation, giving the local government autocratic control over native methods by making it the sole judge of “possibility”. Probably

133 Caldwell, K., *op. cit.*, p. 46.

134 *Ibid.*, p. 47.

135 Phillips, *op. cit.*

136 Such as United States Tariff Act of 1930, Section 527a.

137 Article in *East Africa*, November 16, 1935.

it would be better to make the prohibition absolute except where a present contrary custom is proved to exist.

Lastly, it is unfortunate that governments did not as originally planned have to redeclare their reservations at the time the convention was signed. Some of these proved to be pretty substantial, and materially affected the working out of the convention in certain regions, especially the poor but populous western colonies. Great Britain expressly exempted both Gambia and Zanzibar from the park-establishment provisions though happily not from the trophy clauses, and was at pains to waive the weapon limitations where there was a question of fly control.¹³⁸ The Sudan (actually Britain again, in disguise), also made this latter reservation, and preserved the right of natives to hunt in reserves, even including some class B animals like the elephant. Belgium, while continuing the five kilogram limit on ivory refused to extend any further protection to the elephant and excluded it from Class B, pleading its great abundance and interference with native life and agriculture.

Let us now see what steps were taken despite reservations made. Most of the available data come from governments themselves, so that we have a better picture of paper performance than of the actual results, but we must use what we have. The Union of South Africa has enforced existing game laws more strictly than before, notably the law against hunting from motor cars,¹³⁹ though it is seemingly impossible to prohibit the use of poison in all cases,¹⁴⁰ and has passed new legislation, including the act of 1934 which goes beyond the convention in making illegal the taking of any wild birds for sale, purchase or barter without a permit, said to be hard to get.¹⁴¹ In addition to the Kruger Park,¹⁴² whose establishment in 1926 made the Union a

138 See reservations listed in 172 *L. N. T. S.* 242.

139 Article in 141 *Nature*, June 24, 1938, p. 1024, quoting Te Water.

140 Final Act, 1938 conference, p. 26, H. M. Stationery Office, London, 1938.

141 Act No. 22, 1934, cited in Final Act, 1938, p. 14.

142 In northeast Transvaal: area 2,201,500 hectares (approximately 7,000 square miles).

standard bearer in the sanctuary field, several new parks have been set up in the Cape Province.¹⁴³ Special protection for the mountain zebra is under consideration (but it has been demoted from Class A to B, by the terms of the Union's ratification) and the number of ordinary reserves has been increased to ten,—six in Natal and two each in Transvaal and the Orange Free State. The government expresses itself as "satisfied" with the working of the convention, which is by no means necessarily a good sign, but it does look as though conditions had improved.

The showing in territories under the Colonial Office is less impressive,¹⁴⁴ and consists mainly of plans. The largest project undertaken has been the marking out in June 1937 of a national park on the Serengeti plains in Tanganyika, east of Lake Victoria,¹⁴⁵ and the final creation of this seems to have been delayed. It will cover an area of 4000 square miles, some of the best big game country in Africa. Southern Rhodesia has the Victoria Falls National Park (approximately 300 square miles) but has created no new ones since the Convention.¹⁴⁶ The government apologizes for the slow going in general,¹⁴⁷ pointing to the comparative density of native population in much of British Africa,¹⁴⁸ to the importance of fly control, on which much is being done but much more remains to be known, and to the peculiar strategic position of Uganda as a "lock" for rinderpest control, which compels the government to keep a free hand there in the interest of all Africa. There are, however, a number of reserves, and Sir William Gowers expresses the hope¹⁴⁹ of

143 Final Act, 1938, p. 14. They are the Kalahari (approximately 2,800 square miles), Addo Bush (8 square miles) and Bontebok (2 square miles).

144 British report on the working of the Convention, May 20, 1938.

145 *Ibid.*, also Final Act, 1938, p. 18.

146 Final Act, 1938, p. 140.

147 British report, 1938 conference.

148 Gambia has 50 persons per square mile, Sierra Leone 50, Nigeria 53: cf. Uganda 29, Kenya 11, Belgian Congo 9, Tanganyika 11, Rhodesia 4, South Africa 15, Kansas (a geographically comparable territory) 22.

149 Final Act, 1938, p. 18.

establishing strict natural reserves in Nyasa and if possible in Kenya; in West Africa there are few sanctuaries or limits on hunting, but government comforts itself with the thought¹⁵⁰ that dense cover creates a natural sanctuary whereas the savannas of East Africa let the game be seen and destroyed at long range, and that in some places no rules are needed because there is no hunting. In general, the provisions about rare species and forbidden weapons are conformed to; and the trophy clauses are law except in Sierra Leone where the needful legislation is pending and in certain places where the import clauses have not been enacted.¹⁵¹

The Sudan finds the general position satisfactory except in parts of the north west, where nomadic Arabs are killing off the antelope. Two reserves have been created in the south and the other relevant provisions applied in general; the elephant is said to be no longer declining, and the white rhinoceros to be actually on the increase.¹⁵²

In Egypt, conforming legislation exists as to rare species, trophies, and weapons; there are two "close reserves" and a national park is projected.¹⁵³ This densely settled land lies, however, mostly outside the convention's practical scope.

Belgium has embodied the bulk of legislation required by the convention in a lengthy decree dated April 21, 1937.¹⁵⁴ Article three thereof puts the enumerated species under the protection of the governor general, whose permission is required for hunting them, and can be obtained only for scientific purposes in the case of A animals and only under special conditions and for a higher price in the case of B ones. Article 7 authorizes the administration to create reserves, 15 to 17 enact the trophy clauses, and 12 makes found ivory government property; the same article,

150 *Ibid.*, p. 133 ff.

151 Nigeria, Northern Rhodesia, Somali, Gold Coast, Gambia, and Zanzibar.

152 Final Act, 1938, p. 144.

153 *Ibid.*, p. 142.

154 *Ibid.*, p. 88 ff.

however, introduces an unfortunate loophole by permitting the killing of protected species in defense of another's property as well as one's own,—a rubbery exception felt regrettable by some of the Belgians themselves.¹⁵⁵ It is curious too that Article 13 retains the antiquated schedule of "noxious animals," which may be killed anywhere except in national parks. Weapons are curtailed by Article 11, and abuse of native rights is partly mitigated by Articles 19 to 29, which grant natives exemption from the law only if they use their ancient methods.

The Albert Park, created April 21, 1925, and enlarged in 1929, has been further augmented along scientific lines to a total extent of almost 3000 square miles and two new parks have been set up, the Kagera in Ruanda and the Garamba on the Sudan border.¹⁵⁶ All this is certainly creditable, notwithstanding the refusal to protect the adult elephant for reasons which have aroused some skepticism abroad; the Belgians have put on a considerably better paper performance than the British in most respects, and as they themselves point out their legislation in some ways goes beyond the convention.¹⁵⁷ The question remains whether the limited sources of so small a mother country can sustain a program of adequate enforcement. At the second conference the Belgians admitted that effective patrol was difficult,¹⁵⁸ especially on the borders.

Italy ratified in the spring of 1936, but the exchange was held up during the friction with Great Britain concerning the king's new title. Steps were taken meantime to put the convention into effect not only in the old colonies but—so far as possible—in Ethiopia as well.¹⁵⁹ Two national parks and a strict natural reserve were created, and a special scientific commission was said to be making a detailed investigation in 1938.

¹⁵⁵ *Ibid.*, p. 85.

¹⁵⁶ Belgian report to 1938 conference, May 24, 1938.

¹⁵⁷ Final Act, 1938, p. 16; Class A is extended by thirteen species.

¹⁵⁸ *Ibid.*, p. 124 ff.

¹⁵⁹ Letter, Wm. to J. C. Phillips, Nov. 5, 1936, in ACIWLP files.

France has been slow to take action and it does not appear that much has ever been done. Except for Madagascar and Jibuti, however, the French lands lay wholly in the west where the convention was least applicable; and the rules relevant to trophies, weapons and protection do seem to have been applied. The delegates to the second conference were able to report that the act of ratification was at that very moment being laid before the President for signature.¹⁶⁰ For some reason the rules apparently do not cover North Africa, though the convention expressly includes it and extends protection to the Barbary stag, Africa's only deer. Nor do we find evidence of any action by Spain; and Portugal has done nothing either, which is especially regrettable since its territories border Natal and also the Kruger Park.¹⁶¹

By an act of 1937, the Netherlands applied Article 9 to the Indies, and the clauses respecting imports to its home territory; ¹⁶² India has also adhered, and the British government has applied the import clauses to Aden. These are the only instances of application to land outside Africa.

The activity of major governments in the interest of wild life lasted less than a decade. The second conference on Africa, duly called as provided, met at London on May 24, 1938, but its atmosphere and output are in marked contrast to the first meeting. Two seats were empty, for independent Ethiopia no longer existed and men of Spain had small leisure in that troubled spring for foreign travel. The delegates reported; the substance of their reports we have already discussed. For the rest, the conference almost instinctively contented itself with polishing details and planning for yet another meeting in 1939 when they hoped also to deal with the problems of Asia and the Pacific. All real action was therefore deferred, the conference regarding its work as preliminary only; but alas for the world! the new

¹⁶⁰ Final Act, 1938, p. 24.

¹⁶¹ *Ibid.*, p. 20.

¹⁶² *Ibid.*, p. 22.

conference has not been held, and international game protection like many things has come to an untimely end.

Still, at least there was some discussion. The Portuguese, notwithstanding their failure to put the rules to date into effect, proposed that bush fires and nomad agriculture again be taken under consideration.¹⁶³ Mr. Fraser for the Sudan proposed the broadening of Article 9.¹⁶⁴ A committee of experts recommended extensive changes in the Schedules of Article 8, suggesting that where an animal was generally scarce it should be included subject to exceptions for particular areas of abundance, and that animals generally common but locally rare should be protected by special clauses in the convention itself. A swing clear away from the original plan is the committee's further proposal that all rare animals be included by name even where local protection was adequate, for the sake of publicity and general maintenance of interest.¹⁶⁵ Specific recommendations are largely in the direction of tightening the lists;¹⁶⁶ but in line with the general tone of the convention nothing was insisted on and the lists have not been changed.

The ghost of 1900 rose again with the examination of the possibility of defining "vermin," but in the end the matter was dropped; Van Straelen (Belgium) spoke of the danger of destroying equilibrium, and Te Water suggested that the several governments submit memoranda first on their own methods.¹⁶⁷ So the present law is, that anything not on the lists or locally protected may be killed by any lawful means. It is probably as

¹⁶³ *Ibid.*, pp. 20, 24.

¹⁶⁴ *Ibid.*, p. 24.

¹⁶⁵ *Ibid.*, Committee report, Annex 1, p. 42 ff.

¹⁶⁶ *Ibid.*, 46 ff. Recommended for Class A: Abyssinian wolf, aardwolf, giant eland, black rhinoceros, bongo, banded duiker, Damara dikdik, Nubian ibex, crested bushrat, otter shrew, pangolin, armadillo, secretary bird, marabou, the egrets and herons, African peacock, broadbill, ground croucher, yellow-billed swallow, white stork, two bustards, flightless rail, and the cave fish of Thysville; for Class B: impala and greater kudu.

¹⁶⁷ *Ibid.*, p. 26.

well that no species has been collectively stigmatized as harmful; for the urge to kill is strong enough without sweeping official encouragement,—one had better concentrate on protection.

On the second day, the subject of insect plagues was introduced. Mr. Francis Hemming, from his experience as secretary of the Economic Advisory Council, spoke of the imperfect information available to any single government, and it was agreed that cooperation would be very helpful. The same was seen to be true in the matter of infectious or contagious disease, and these possible fields for international action were discussed, though without final action.¹⁶⁸

Finally came the question of a central office for exchange of information concerning systematic offenders, or even first offenders where the case was serious enough to justify forfeiture of license.¹⁶⁹ The Belgians proposed special bilateral agreements, whereby governments would undertake to discipline their own residents, at least natives, who committed infractions in neighboring foreign territories, and also foreign residents who after similar infractions there took refuge on the signatory's soil. *These suggestions for a stricter form of police, submitted in memorandum form*¹⁷⁰ *and not even discussed, are perhaps the most relevant and valuable ones made at the conference;* and it is strongly to be hoped that the beginnings thus made will not be suffered permanently to lapse. It is significant and in line with European legal tradition, that they came not from Great Britain but from a Latin nation.

Something, we see, has been done for Africa's game. Much more remains for some future day, but the general course for appropriate legislation is now fairly well marked out. The emphasis on protection by means of specific reserved areas of sanctuary, scientifically laid out, seems shown by experience to lead to the best chance of preserving our wild garden of life. Of only

168 *Ibid.*, p. 28 ff.

169 *Ibid.*, p. 30 ff.

170 *Ibid.*, Belgian Report, p. 127.

less importance are special laws for the protection of rare animals, a strict control of commercial traffic in animal products, and the prevention of methods of mass slaughter. Ordinary game laws, with license requirements, bag limits, and closed seasons, should not be overlooked either; and of course, all these provisions must be observed and enforced.

Good beginnings have been made—we can hardly call it more—at least in British and Belgian, perhaps in Italian Africa also, and these account for far the greater part of the big game country. But all recognize that more should be undertaken, and that enforcement is everywhere imperfect, while the existing law contains too many loopholes, especially in the matter of native rights. A really thorough solution waits not only upon the restoration of political stability, but on a fuller understanding of the respective needs of man and animal, considered as members—if unequal ones—of a single community.¹⁷¹

2. PAN AMERICAN WILD LIFE PRESERVATION

THE protectors of Africa's game must take some satisfaction at seeing their handiwork borrowed in the American republics, though they themselves have been unable so far to extend it to the Pacific lands. We have hinted elsewhere at the insufficient protection afforded in many and perhaps all American countries to at least some kinds of wild life, and it is pleasant therefore to record the signing of an international protective act in the autumn of 1940, a year not generally distinguished for such affairs.

Stirred by the efforts of interested persons and associations, the eighth Pan American Conference, sitting at Lima in De-

¹⁷¹ In Africa, as yet in the formative period of civilization, lies the best chance for devising a long-term plan of adjustment that will give the wild animal a real future. Somewhat similar conditions do also prevail in parts of continental India and in Malaya and in all these places the problem must be treated at no very distant date or find its own solution,—by extinction. The rhinoceros, blackbuck, snow leopard, many deer and many birds are menaced. See Faunthorpe, J. C., "The Disappearance of Wild Life in India," *24 Natural History* 204, 1924. See also Annual Report, All India Conference for the Preservation of Wild Life, 1936.

ember 1938, proposed that the Pan American Union by a committee of experts examine the problem of nature protection and wild life preservation, and formulate an appropriate convention.¹ The Union through its Division of Agricultural Cooperation circulated a questionnaire and thus obtained from the several republics² much material concerning their national laws, their national parks, and the condition of their flora and fauna; the committee of experts then sat at Washington from May thirteenth to sixteenth, 1940, and considered the evidence.³ A draft convention followed which adheres closely to the lines laid down at London, as will be seen; it is a little curious that this evident debt has not so far as appears been openly acknowledged. The Governing Board of the Union approved the draft with certain alterations on the twenty-ninth, and on October twelfth the representatives of seven governments signed the convention in its final form. Others have since taken the same step,⁴ but Argentina and much of Central America are not on the convention as yet, and only Guatemala and the United States had ratified at the end of 1941. The act therefore has not yet come into effect, and even if it had, would lack something of full usefulness though enforced to the letter in every signatory state. At least the beginnings have been made, but much remains.

The preamble recites the common desire "to protect and preserve in their natural habitat representatives of all species and genera of their native flora and fauna including migratory birds . . . and preserve scenery of extraordinary beauty, unusual and striking geologic formations, regions and natural objects of

1 Resolution # 38, 8th International Conference of American States, 1938.

2 Report of the Committee of Experts, Pan American Document, Washington, June, 1940 and State Department Bulletin, October 12, 1940.

3 *Ibid.*

4 *Ibid.*, and letter of February 26, 1941, p. 65, *infra*. Present signers (December, 1941): Bolivia, Cuba, El Salvador, Nicaragua, Peru, Dominican Republic, United States, Venezuela, Ecuador, Costa Rica, Mexico, Uruguay, Brazil, Colombia, Chile, Guatemala, Haiti, Argentina.

aesthetic, historic, or scientific value, and areas characterized by primitive conditions . . .”⁵ Significant are the references to natural but non-living objects, mentioned in article two of the older convention but not emphasized, and to migratory birds, cooperation in whose preservation is particularly important, and rather seriously lacking.⁶

Article 1 defines the various categories. A national park is a protected area open to the public enjoyment, a national reserve simply a protected area, a nature monument an area, object or species set aside inviolate except to authorized science or administration, and a strict wilderness reserve—analogous to a strict natural reserve—a primitive region closed against motor transport and all commercial development, though *not* necessarily other entry. Migratory birds are those species *some* of whose members *may* cross an international boundary,—a properly broad definition.

Article 2 binds the signatories to “explore at once” the possibility of setting up areas of the enumerated types and to set them up as soon as possible, giving due notice to the Pan American Union. As at London, the article is precatory in essence and imposes no absolute obligation,—not even to create “ordinary reserves.” Article 3 makes park boundaries unalterable except by legislation, and immune to commercial exploitation, forbids hunting, with the usual exemptions, and requires facilities for public recreation and education. By Article 4, the strict wilderness reserve is to be maintained inviolate as far as possible, except for the needs of science or government or “uses consistent with the purposes for which the area was established,” thus more or less closing the gap left in Article 1. The convention thus far largely parallels the first five articles of the London one.

⁵ Draft convention and report of Governing Board, Pan American Union, June, 1940.

⁶ See chapter II.

Article 5, foreshadowed by the preamble, is unique. The governments agree to propose laws and regulations to preserve flora, fauna, scenery, striking geologic formations, and regions and natural objects of aesthetic interest or historic or scientific value. Article 6, an admirable provision added by the Governing Board, enjoins cooperation among the signers, who agree to lend aid, consistent with their national laws, to scientists, to collaborate with scientific institutions, and to facilitate the publication of their findings. Though perhaps implicit in the London Convention, this injunction is not so clearly expressed there. Article 7 binds the governments to the protection of migratory birds of economic or aesthetic value, with a view to their rational utilization for sport, as well as food, commerce, and science. Of this article we shall hear again in the chapter which follows.

Article 8 brings us back to the parallel with Africa and the corresponding article of the London Convention; it declares the protection of some species to be of special urgency and importance and permits their taking only in special circumstances, under government permit in the interest of science or administration. No list is annexed, however, to the original convention; the protected species in each country are to be those contained in a self-compiled schedule to be submitted.⁷ Article 9 is a "trophy clause," binding the states to regulate the trade and transit of protected flora and fauna by requiring certificates for export and forbidding imports which lack them.

Articles 10 to 12 are formal; existing international agreements are not to be superseded, the Pan American Union is a central office for information distribution, the convention is to

⁷ Letter of J. L. Colom, Chief of Division of Agricultural Cooperation, Pan American Union, to author, February 26, 1941. The American list includes 3 mammals (woodland caribou, sea otter, and manatee) and 7 birds (trumpeter swan, California condor, whooping crane, Hudsonian godwit, Puerto Rican parrot, Eskimo curlew, and ivory-billed woodpecker.) The curlew is probably already extinct; the ivory-bill is believed by some naturalists to be past saving.

come into force three months after deposit of the fifth ratification with the Union and to run five years and thereafter until denounced by so many as to leave less than three bound.

The convention is well drawn and the general response so far is promising; the United States ratified on April 28, 1941,⁸ and it is hoped that a good number will follow. Two points of substance are especially worthy of comment. First, while in form resembling the London convention, this one does not represent the same common action upon a common problem—except in the most general sense, but is rather an agreement among nations to take individual action upon individual problems. In America there is no such vast extensive habitat, cut up by territorial boundaries, as in Africa, whose control depends on unity of action, but a great variety of diverse and separated habitats. Nor for that matter do we have the same big game treasure, for the Americas to the South of us have not been endowed in recent time with great herds of wandering fauna. The rhea and the guanaco are about the only exceptions, and their protection is a problem local to the Argentine. Accordingly, the call is for several, and not for joint action; international activity while excellent in principle, is not as necessary as in the lands just considered.

Secondly, the motive behind this convention differs at least in part from that which produced the African legislation. There the emphasis was heavily upon substance, with political considerations minor; here the effort seems very plainly bound up with the contemporary effort of statesmen to create a political tradition of Pan-American cooperation. The good neighbor policy, not protection of a vanishing resource, seems to dominate the situation,—though of course this is not said in disparagement. Since, then, the problem is not fundamentally one of international protection but of political cooperation, and since it has in any case but just entered on its career in international legislation, it need, perhaps, receive no further consideration here.

⁸ Department of State Bulletin, May 3, 1941.

CHAPTER II

PROTECTION OF BIRDS

I. PROTECTION OF AMERICAN MIGRATORY BIRDS

OF the wild pigeons that once darkened the American sky, not one remains. It almost seems as though our passion for the destruction of nature rose in direct proportion to her bounty, with size and number supplying a sort of challenge impossible of human forbearance. A long-told tale of reckless waste and shameless squandering of the world's riches still repeats itself to ears that will hear it, and the decline in America's game birds is a notable item in the story.

The apparent—only apparent—ability of the annual migrant flight to renew itself in undiminished quantity somewhere off behind the north wind delayed all too long the realization that here as much as in the forests, in the shallow shortgrass soils, in the flowing wells of Texas, or in the waters continually combed with hook and net and poisoned with the effluvia of a thousand cities, was something worth having which was fairly in the way of disappearing forever. Hornaday was able thirty years ago to fill a tall headstone with the names of the already departed,¹ the great auk, the Labrador duck, Pallas's cormorant, the passenger pigeon, the Eskimo curlew, the Carolina parakeet, and five West Indian parrots,—to which we must now add the heath hen, unreported at its last stand since 1931. And this takes no account of more than a score of game and shore birds reduced to the vanishing point by our untiring efforts.

In some respects to be sure the people of this continent have become educated. The market hunter with his mass methods of slaughter has been driven from the field, though as much by failure of the supply as by legislation; and by unwearied campaigning the Audubon Society and the rest have cured most of us of the notion, once fairly general, that the killing of song-

1 Hornaday, W. T., *Our Vanishing Wild Life*, New York, 1913, p. 10.

birds was a sign of manliness. The natives of Southern Europe, where the practice is still common, brought the custom with them to this country but today have largely dropped it or been discouraged by law.²

Nevertheless a more than fourfold increase in licensed gunnery in a quarter century since 1911³ must have done something to offset the growth in regulation designed to meet an earlier situation; and the destructive effects of settlement—especially of oversettlement, with clearing of brush and the draining of marshes—, threaten a further and drastic depletion not fully foreseen in the old days and not now much provided against. Remember this, countrymen, before we congratulate ourselves, as we are apt to do, on the brilliant success of our Bird Treaty and contrast it with the failures of quarrelsome and divided Europe.

The case for protection has commonly run into two chief arguments: that the supply is inexhaustible,—which all must today admit that it is not,—and that the birds are of no use anyway.⁴ The argument that birds are merely ornamental, as if that excused their destruction, can no longer be maintained in the face of present knowledge of nature's balance; for they eat insects. Damage to the American corn crop, *even before the borer*, was estimated at eighty million dollars annually due to

2 Pennsylvania was the first state to take this action, by forbidding aliens to have firearms (Laws 1909, # 261); the law was upheld in *Patsone v. Pennsylvania*, 232 U. S. 138.

3 Hornaday, W. T., *Thirty Years War for Wild Life*, New York, 1931, p. 3 ff.

4 Some have pressed the converse argument, that it is necessary to use birds and their eggs as ingredients of the popular diet. Plainly this is no argument if continued use leads to extermination; and it has no real meaning for most of the world, though we will grant certain apparent exceptions. The eggs of seabirds are said to be important to the small population which ekes out a scant living on the rim of the Arctic; and deep-rooted custom, if not actual necessity, has created something like a vested interest, or prescriptive right in bird killing in Mediterranean Europe. We have, or have had, a similar situation in the South, where shotguns are common, food rare, and law enforcement often problematical; but to understand the urge is hardly enough. The practice still should be stopped.

insect pests; ⁵ another figure has set the annual insect toll exacted from all agriculture at 500 million, or about the average New Deal appropriation for agricultural purposes. It is not strange that some of us doubt man's ability to go on at all, were it not for the bird's gratuitous and unwitting aid; and there can be no doubt that our burden in an overburdened world would be heavier far without this assistance. It is too late in the day to assert that birds have no economic value. And to stop at that would be to admit the rightness of an archaic utilitarianism that sees no reason for preservation if it cannot be measured in dollars. Is not the aesthetic aspect of the bird community reason enough for its salvation?

To return to the first argument, we find that in spite of the pigeon's fate,—it was vanishing by 1890 and gone by 1915,—hunters were reluctant to concede the fact of depletion. The waterfowl, upland game, and shore birds actually declined unchecked for years; but the habits of the first and last were so little known as to lend a certain color to the claim that they were not doing so. Most of them breed far from human haunts, in a great world of marsh and lake and lonesome shore that stretches from Alaska to Hudson's Bay, whence they mysteriously appear in their autumn flights congregated in vast numbers. This annual wonder long nourished the legend of perpetual re-creation. The sportsman clung to a "hazy kind of faith in the existence far north of our borders of a sort of mysterious duck and snipe factory which could turn out the required supply practically forever." ⁶ The dense flocking habit gave him a false impression of fecundity, especially in the case of shore birds; in fact, these creatures breed very slowly, more than one or two chicks a season being uncommon, while the same habit of flocking makes them a mass target.

Yet a protective movement did begin and did get results. Its history is statistically rather unsatisfactory; if the sportsmen's

⁵ Hornaday, *Our Vanishing Wild Life*, p. 209 ff.

⁶ Phillips, J. C., *Migratory Bird Protection in North America*, ACIWL, # 4, New York, 1934, p. 5.

faith in perpetual replenishment was hazy, the conserver's belief in imminent extinction seems also to have reposed on broad empiricism rather than actual data, and figures on the decline in avian population are not to be had until very recent years; the long trend, however, has borne the conserver out. The movement in fact started on an aesthetic rather than scientific basis; it was in the eighties that a sudden dawning realization that the city was too much with us led the first tide of public interest into the wilderness that only a few like Thoreau had trod before. The first Audubon society, founded by Grinnell in 1886 soon lapsed, but was revived by William Brewster, a decade later, and achieved permanent and active standing with the work of William Dutcher at the opening of the twentieth century.⁷ The protective laws of today rest partly upon the work of these people, partly upon that of actual gunners' associations, whose members fear to lose the source of their recreation. To apportion credit with accuracy is impossible. In the same year of 1886 the government itself was induced to set up a modest bird bureau in the Department of Agriculture (then itself rather modest) which grew into the Biological Survey (1905) and became the administrative arm of American wild life conservation.⁸

~ The problem is complex, by reason of the fact of migration. We must protect the bird on its nest, in the kind of country suitable for nesting, on its twice-yearly journey through the perilous human world, and, ideally, on its winter range as well. This is a big order, for three sets of conditions are involved and much of the country is already expropriated from a bird's point of view,—two factors which the protectors of Africa's game did not face in like degree. Many birds, and many of the most threatened, range far beyond either our borders or Canada's, even to the pampas of the Argentine; and the treaty in which we take pride is not only deficient in substantive scope but even fails to cover the geographical field. The task is multinational,

⁷ Pearson, T. G., *Adventures in Bird Protection*, N. Y., 1937, p. 127 ff.

⁸ The Bureau was merged in 1940 with other agencies in the Fish and Wildlife Service of the Department of the Interior.

and despite the Mexican treaty and the recent Pan American convention, barely well begun.⁹

American protective legislation developed in a slowly broadening stream. Massachusetts had a closed season on quail as early as 1817, and in the following half century four states gave limited consideration to water fowl.¹⁰ Thereafter statutes follow fast upon one another. With the invention of swivel guns about 1880 begin the first limitations on the type of weapon, and the general adoption of bag limits and the warden system.¹¹ Many of the early laws were exemplary indeed so far as they went, but unfortunately penalties were almost universally low—ten dollars or so—and amounted to little more than a license to do wrong, like the old saloon legislation. Market hunting was not hit hard till New York's Bayne law of 1911, which made the sale of wild game illegal at all times, under penalty, and which has since become standard practice.¹²

All this was on a state basis. The protection problem is so visibly general that the belated entry of the federal government into the field seems strange now, but these things lay so far outside the tested realm of federal jurisdiction, that no Act of Congress is to be found before 1900, and then only one of an "auxiliary" nature. The Lacey Act¹³ belongs to the same legislative family as the Wilson Act,¹⁴ the Hawes-Cooper Act¹⁵ and the first child labor law.¹⁶ It forbids the interstate shipment by

9 Canadian Treaty, U. S. T. S. 628; Mexican, U. S. T. S. 912; and see Pan American convention of October 12, 1940, Article 7.

10 For detailed study of this material see Swan, W. A., "A History of Game Legislation in the U. S.," 28 *Case and Comment* 248, 1911.

11 North Carolina was the first to vest the *Audubon Society* with the duty of law enforcement, fees, wardens and all. Pearson, *op. cit.*, p. 75 ff.

12 Hornaday, *Our Vanishing Wild Life*, Chapter 27, *passim*.

13 31 Stat. 187.

14 26 Stat. 513.

15 45 Stat. 1084.

16 Phillips, *op. cit.*, p. 2.

common carrier of wild animals and birds killed contrary to state law, and led to at least some cooperation between the Biological Survey and the state officials, but no enforcing powers were granted till 1918.¹⁷ The first attempt to put the national government *directly* in the protection business was the Shiras bill (December 5, 1904), an effort to vest the Secretary of Agriculture with power to fix the season on game birds¹⁸ but it went without honor till 1913, when as the McLean Act, broadened to apply to all migratory birds and fortified with a ten thousand dollar appropriation¹⁹ it finally passed both houses. Some members had doubts of its constitutionality, and indeed these were shared by President Taft himself, but it slipped into law at the very last moment of his administration in the familiar form of an unobserved rider to an agricultural appropriation bill.²⁰

The law was brief and incomplete, but would at least have reduced the slaughter at the breeding season had it not fallen afoul of the federal courts. Had the question come up twenty years later, when the interpretation of federal power had become more elastic, the original act would probably have been upheld; for the judiciary have consistently recognized the principle of governmental game protection since *Geer v. Connecticut*.²¹ But the effort to classify the flight of birds as a form of

¹⁷ *Ibid.*

¹⁸ See "The Protection of Migration Birds," 47 *Pan American Union Bulletin* 375, September, 1918.

¹⁹ Phillips, *op. cit.*, p. 10 ff.

²⁰ *Ibid.*

²¹ 161 U. S. 519 (1896). The court held that the state had not only a right but a duty to preserve animals *ferae naturae* for its people, though Field and Harlan thought a dead grouse became an article of commerce which a statute couldn't prevent the export of. In *Ward v. Race Horse*, 163 U. S. 504 (1895) the court held that a Wyoming law restricting elk shooting prevailed over a prior federal treaty preserving forever the Indian hunting rights, and in *Sils v. Hesterberg*, 211 U. S. 31 (1908) a state law against possession of game, even from outstate, in the closed season was upheld as valid even irrespective of the Lacey Act.

interstate commerce proved too much for the judicial stomach despite some ingenious theories of jurisdiction produced in support of the act.²² The test case of *United States v. Shawver*²³ resulted in a defeat before the Arkansas district court, and although the Supreme Court referred the case back on technical grounds in March 1916, its attitude was so obviously unfriendly that no effort was made to secure a rehearing, and friends of the law concentrated on the treaty which by then was under negotiation.

And in this curious way a national issue expanded into an international one. It was always such in its essential nature and would surely have become the subject of diplomacy sometime, yet this cooperation did not come about for substantive reasons, but was invoked as a procedural tour de force, a legalistic device for meeting the technicalities of American constitutional law. The treaty solution was proposed in Congress on January 14, 1913²⁴ with the blessing of the late Elihu Root, and was quickly seen to be more practical than the constitutional amendment which had also been considered.²⁵ A resolution that a draft treaty be prepared passed on July 7th, and the State Department

22 Professor Corwin, in "Game Protection and the Constitution," 14 *Michigan Law Review* 613, 1916, argues thus: the commerce power is the power to keep streams navigable; this requires the preservation of their headwaters, which calls for the protection of the forests, in which the birds are of use, therefore birds are within the commerce power. Almost too ingenious!

23 214 Fed. 154 (1914). See also *State v. McCullagh*, 96 Kan. 786, 153 Pac. 557 (1915): "The natural flight of wild fowl from one point to another does not constitute commerce, unless that word be expanded beyond any significance heretofore given it, Whatever other element may be spared from a definition of the term, it has not been heretofore applied to processes or occurrences not directed or affected by human intelligence." See also *Carey v. South Dakota*, 250 U. S. 118 (1919). But an unreported South Dakota case is said to support the act: 17 West Publ. Co. Docket 1476.

24 *Statement, Permanent Wild Life Fund*, 1917, p. 128; also Phillips, *op. cit.*, p. 13 ff.

25 Phillips, *op. cit.*, p. 13. The legislative history herein is summarized from this work.

set about preparing one but becoming entangled in the requisite professional detail passed the matter over to Agriculture. The document which became the final basis of settlement was chiefly prepared by T. S. Palmer, Chief of the Biological Survey, and his successor E. W. Nelson, aided by R. W. Williams, of the Solicitor-General's office, Assistant Attorney-General Underwood, and Fred K. Neilsen, Assistant Solicitor to the State Department.²⁶

Despite all this talented draftsmanship, the treaty suffered much before finally achieving ratification. There is more to legislation than the adoption of expert recommendations. The farmers demanded and got a clause to let the Secretary of Agriculture authorize killing of species threatening to become noxious. The Canadians objected to the late date set for the end of spring shooting, and this was changed too. The preservation of native rights—by now familiar to the reader—likewise appeared in issue, and so the Indian or Eskimo as long as he hunts in the manner of his fathers is secured in his right to do so.

Contents aside, there was considerable political opposition in Canada, overcome mainly by the skill of C. Gordon Hewitt, who as Dominion Consulting Zoologist did the pressure work. Many Canadians suspected the business if only because it originated in the United States. Sir Martin Burrell, minister of agriculture, was reluctant to go along,—the chestnuts, it seemed, were all ours, Canada's but the paw. The conservation field had hitherto been left to the provinces, and the question of prerogative was therefore raised; it was indeed thought best to get the consent of provincial ministries without consulting their parliaments, and even so both Quebec and British Columbia hung discouragingly back.²⁷ And not least, the war by then raging in Europe distracted the mind.

²⁶ Phillips, *op cit.*, *passim*.

²⁷ *Ibid.*, pp. 17, 18.

The document was some time on its journey from Washington to Ottawa and back by way of the provinces,²⁸ but was happily recovered, only to become mysteriously sidetracked in the British embassy whither it had gone for final signature after all changes were agreed on. Retrieved by the efforts of its supporters, the treaty was finally signed by Lansing and Spring-Rice on August 16, 1916 and became law following the exchange of ratifications on December 7th of that year.²⁹

The preamble justifies the act on the ground of birds' value as food and as insect destroyers, but the convention actually goes beyond it. It is broad and inclusive, listing the protected migratory birds in three categories (Article One): game birds, insectivorous birds, and others. In the first category come the wild ducks and nearly all water and shore birds, as well as pigeons; but notably unprotected are the upland game,—quail, grouse, pheasant, turkey, prairie chicken,—some of the most favored and so most menaced targets of all. As a class moreover, they are generally found in accessible places and many are distinguished for a certain trustfulness of nature, not to use a stronger word. Protectionists bewailed this exception, and though these forms are not all strictly migratory, it is too bad that the blanket of protection could not have been stretched just a little farther. The discredited analogy between flight and commerce has been dropped anyway; and since the treaty has been held valid for birds whose migrant flight is wholly within one of the two countries, I can see no reason why it should not be valid for resident species as well,—the fact of migration seems to have become incidental.

The "dicky-bird clause," relating to insectivorous species, puts under protection the great majority of songbirds and small land birds generally, but still seems to hint a distinction between the useful bird who eats bugs and the presumably noxious one who eats grain. If elaborated, this would leave unguarded not

28 *Ibid.* and *Statement, Permanent Wild Life Fund*, 1917, p. 130 ff.

29 *Ibid.*

only the crow family but most of the finches and sparrows, nearly all harmless and for the greater part useful.

Into the third classification are promiscuously dumped those waterfowl whose fishy diet or other undesirable characteristic excludes them from the class of game,—the gulls, herons, and so on. Other birds, notably the hawks and owls, which are regularly and most unjustly shot on sight, get no federal aid.

Article One then is classification; Article Two contains the substantive essence of the whole treaty. Both parties undertake to establish closed seasons of fixed minimum length; migratory game is not to be hunted between March 10th and September 1st, (shore birds of the Atlantic coast north of the Chesapeake not between February 1st and August 15th), and the open season is nowhere to exceed three and a half months. Other birds (the second and third classes) are not to be hunted at any time, but are protected throughout the year. A fairly minor exception is made in favor of Indians and Eskimos, who may at any time take scoters and little auks for their own use, not for sale. The third and fourth articles carry the protective principle further in certain cases; the first puts a ten year closed season on most shore birds and a few others, reserving a certain autonomy to British Columbia, the other proclaims special protection for the wood and eider ducks by a five-year closed season, by refuges, or otherwise. This is the only reference to the sanctuary principle in the whole convention.

Article Five bars the taking of nests or eggs except under permit for scientific or breeding purposes,—a clause analogous to those protecting the young in other wild life treaties. Six forbids the exports of birds or eggs during the close season and elevates the Lacey Act to a rule of international legislation by forbidding international commerce in birds or eggs taken or shipped contrary to local law. No bird is denounced as noxious, but by Article Seven permits to kill may be issued where particular species are shown to be injurious; however, no traffic in birds so taken is allowed.

Eight and Nine specify the need of enabling legislation and ratification. The convention was to remain in force fifteen years and then indefinitely until denounced upon one year's notice. Such denunciation has of course never occurred, and no question of repealing the action taken has been seriously considered at any time since.

This is the convention always cited as a shining example of successful international cooperation in a good cause, and Bougault³⁰ regretfully compares it with the drearier tale of protection in Europe. All this is true as far as it goes, and none of us dreams of undoing the job; the only question is, does it begin to cover the subject? It is simply a game law, imposing closed seasons and limitations on commerce; and later experience has shown that such legislation, even reinforced by universal local licensing laws meets the problem only in part. The critical importance of reserved areas, where the protected animal may find sanctuary and safely breed and rear its young in a suitable environment has gradually come home to us, especially with the drought years of the early thirties, and is reflected in recent national legislation though not in treaty amendment.

Insufficient in method, the convention is also lacking in geographical coverage. Newfoundland, Labrador, and the French islands of the Gulf of St. Lawrence are not included, and this leaves many "non-game" sea birds and a few others vulnerable on their breeding grounds³¹ and on migration. Even more serious is the absence of Latin America from the convention, so that killing on the south end of the migrant journey continues unabated to the present day, as will be shown below.

Still, much was accomplished after all. Both signatories passed the necessary enabling laws at a reasonably early date, considering what a committee chairman refers to as the "pres-

30 Bougault, *La Protection des Animaux*, 1937, p. 58 ff.

31 "The Protection of Migratory Birds," 47 *Pan American Union Bulletin* 375, p. 378, and Phillips, *op. cit.*, p. 26.

sure of other matters.”³² The original bill introduced in Congress was lost notwithstanding the personal efforts of Secretary Lansing in urging action³³—for our cosignatory was by then about to become our ally; but a second measure passed.³⁴ Thus a thoroughly unwarlike measure was put into effect in the very middle of a life and death conflict in which both parties were involved.

Our migratory bird treaty act became a law on July 3, 1918.³⁵ It prohibits the taking, possession, sale, or shipment of any bird, part, nest, or egg in the protected class except under regulation, and directs the Secretary of Agriculture, with the President's approval, to issue the necessary regulations. The Lacey Act is renewed and broadened; it becomes unlawful to ship in interstate commerce any bird, etc., taken or shipped contrary to the law of the state of origin, *or* to import any so taken or shipped from any Canadian province. Section 5 empowers any authorized warden to arrest without warrant for a violation committed in his presence, and to search suspected gear, and confiscation is decreed for articles illegally taken. This sweeping power was written into the bill on urgent representations of Secretary Houston,³⁶ who pointed out that violations generally occur in remote places where the warden must act largely on his own. The act prescribes penalties of six months and five hundred dollars, authorizes permits for scientific purposes or in case a protected species becomes harmful, and allows the states to make their own law provided it is no less strict than the federal.

32 Senate Committee on Foreign Relations, 65th Congress first session—report 27, # 7249—April 20, 1917.

33 See House Report 1430, Committee on Foreign Affairs, 64th Cong., 2nd Sess., # 7110, Feb. 6, 1917.

34 See House Report 243, Committee on Foreign Affairs, 65th Cong., 2nd Sess., # 7307, Jan. 17, 1918: The chairman urged the importance of protecting the crops “so necessary to the support and maintenance of the brave men sent to the battlefield by this republic.”

35 40 Stat. 755. See Pan American Union article, *supra*, also Phillips, *op. cit.*, p. 21.

36 House Report 243 *supra*, letter of Jan. 10, 1918.

The first supplemental regulations were promptly issued³⁷ and have been kept up to date by periodic amendment. They relate to the size and type of gun, the manner of its use and the use of decoys and dogs, the type of water craft to be employed (no motor or sailboat), the length and date of the open season according to different specified zones, the daily bag limit on each species (both the number of species which may be hunted and the number which may be taken have been repeatedly narrowed since), the weekly limit on the number which may be shipped—further to discourage market hunting—, and the case of special permits. Proof of injuriousness is put upon the applicant for such permit, by naming no species in the regulations themselves.

The Canadian law is similar³⁸ but somewhat broader in its grant of administrative power, the Governor-General in Council (i. e. the ministry) being authorized to make regulations at will concerning seasons, permits, closed areas, shipments, or anything else. The Interior minister is to carry out the law, with power to appoint officers and to seize guns as well as birds. Regulations promulgated under the act resemble those in the United States, with local modifications in respect of dates and other detail, but there are no special provisions in regard to hunting methods.

The laws enacted and their administration created, there remained for this country the hurdle of the courts; but in *Missouri vs. Holland*³⁹ the Supreme Court established the law, broadly interpreting the treaty power and citing the fish and seal treaties as precedents. The principle once established, not many

³⁷ See Pan American Union publication, *supra*, p. 77.

³⁸ *Ibid.*

³⁹ 252 U. S. 416 (1920); see also, for the act, *US v. Thompson*, 258 Fed. 257, *US v. Rockefeller*, 260 Fed. 346, *US v. Selkirk*, 258 Fed. 775 (1919). The question whether a treaty can always be invoked to justify a course otherwise illegal raised dread vistas in the legal mind after the *Holland* case: see Black, F. R., "*Missouri v. Holland*, a judicial milepost on the road to absolutism," 25 *Illinois Law Review* 911, 1931.

subsequent cases have arisen, a single authority standing uncontradicted to the effect that the act's scope will be liberally construed by the judiciary.⁴⁰

On the administrative side the results have been more promising than satisfactory.⁴¹ The original federal appropriation of fifty thousand dollars was later raised to 190 thousand annually, but is still quite inadequate, supporting a force of less than twenty-five wardens and compelling the enforcement division to lean heavily on state cooperation. Fortunately this has generally been forthcoming and states generally have conformed their laws to the federal standard; but the number of gunners grew from a million and a half in 1912 to six and a half by 1930, and their guns improved too⁴²—which does much to offset the good done by shorter seasons and lower limits. The bird population does not increase in proportion to these changes.

The Canadian situation seems to be better;⁴³ there have been complaints that the season opens too late, and resentment in the Maritime Provinces over the ban on eggs. Enforcement is divided between the dominion and the provinces, the former contributing 50 to 60 thousand dollars a year, the latter about 800 thousand. Biennial conferences of officials iron out administrative difficulties. The enforcement staff is part paid, part voluntary, and the Royal Canadian Mounted Police lend aid at need.

But the great failure was in requiring no system of sanctuaries where birds could breed and migrants rest undisturbed. The development of roads and motor transport leave ever fewer areas where gunners cannot go. In most of the continent the natural sanctuary, inaccessible to human invaders, has ceased to exist.

40 *U. S. v. Lumphkin*, 276 Fed. 580, Nov. 15, 1921, the court charging it not important that the particular bird in question was not migratory, since some members of the species were so.

41 Phillips, *op. cit.*, p. 22 ff.

42 Hornaday, *Thirty Years War for Wild Life*, New York, 1931, p. 3.

43 Phillips, *op. cit.*, *passim*.

With the craze for more agricultural land, which reached its climax just after the treaty, came a multitude of drainage projects, narrowing more and more the surviving wild life havens; by this means the great bird colonies of Klamath and Malheur ⁴⁴ were destroyed,—with no corresponding benefit to agriculture, for the dry lake beds proved worthless. Most serious of all, the intensive plowing and overgrazing of the dry plains has lowered the general water level over a great area, and wrought an unexpected drainage. J. N. Darling in 1934 estimated that seventeen million acres of breeding range had been destroyed in this way,⁴⁵ of which five million at least could not be spared. This is disastrous, for the major flyway between the far northern marshland and the winter range along the gulf lies precisely across the dry west, where wet spots were never too numerous, and where drought works disproportionate harm to the wild-fowl.

The great Louisiana marshes, wintering ground for millions of birds, now are menaced by an oil boom in their very midst, with consequent preemption of land and pollution of water. In 1935 the birds were already being crowded toward the lagoons of south Texas and the Rio Grande delta, regions themselves subject to oil, reclamation and defense developments.⁴⁶ Alligator grass is driving out the native grasses of higher food value on the same coast⁴⁷ and the mysterious disappearance of eel-grass on the Atlantic front which began in the early thirties threatens extermination to the brant. The planting of trees on Dakota farms attracts crows, which have greatly increased and prey upon the young ducks, while the coyote does the same thing elsewhere; ⁴⁷ in California the introduction of rice growing has created still another interest with which the ducks conflict.

44 See Pearson, T. G., *Adventures in Bird Protection*, Chapter 17, 1937.

45 Hearings, Special Committee for the Conservation of Wild Life, 73rd Cong., 2nd Session, 1934, p. 2.

46 *Ibid.*, 74th Cong., 1st Sess., 1935, p. 30 ff.

47 *Ibid.*, p. 170 ff.

These conditions are not confined to the United States, field studies indicating that western Canada has the same problems; ⁴⁸ and worst of all, it is hard to convince the inhabitants of marsh country that these things are so, for the concentration of the bird population at the surviving suitable areas keeps up an illusion of undiminished numbers—at those points.⁴⁹

The importance of creating wild life reserves is now well recognized, but as it has not been the subject of *international* action we shall not go into much detail here. Bills to set up federal refuges and finance their purchase and upkeep by a federal license fee were introduced in the 69th Congress, despite fears for the poor man's sport and anxieties over the extension of the federal power.⁵⁰ Some conservationists moreover were suspicious of the program ⁵¹ because it provided public shooting grounds as well as sanctuaries, and indeed former Secretary H. C. Wallace emphasized this point—to get the public outdoors—as the most important purpose of all.⁵² The committee report was favorable but the bill failed to pass, and so did one introduced at the next congress despite Senator Norbeck's sponsorship.⁵³

Action was finally taken in 1929, or just before the natural conditions which had been getting worse for a decade became critical. This act ⁵⁴ recites that it is passed as part of our treaty obligation, and with the act of 1918 forms the basis of our con-

48 Hearings, Wild Life Committee, 75th Cong., 1st Sess., June, 1937, p. 20 ff.

49 *Ibid.*, p. 2 ff.

50 Hearings, House Committee on Agriculture, 69th Cong., 2nd Sess., 1926, pp. 1-25.

51 Senate Committee on Agriculture, Report 193, # 8524, 69th Cong., 1st Sess., 1926.

52 *Ibid.*, p. 5.

53 Senate Report 105, # 8829, 70th Cong., 1st Sess., 1928; see 28 *Bird Lore* 313.

54 45 Stat. 1222.

servation program. It creates a Migratory Bird Commission composed of the Secretaries of Agriculture, Commerce, and Interior, two senators, two representatives, and the Secretary of the Biological Survey, to select sanctuary sites.⁵⁵ The shooting grounds have disappeared in spite of Mr. Wallace. The Department of Agriculture acquires the approved lands by purchase, rental, or gift, and an annual appropriation is to be provided. States' rights are safeguarded by making the state's game official, or, if it has none, the governor an ex-officio member of the commission as to lands in the respective states and permitting no acquisition without prior consent of the state legislatures.⁵⁶

The commission created by this act has performed its work with diligence but has met the unexpected handicap of less and less money in the face of greater and greater need. The original program prescribed \$75,000 for the fiscal year 1930, \$200,000 for 1931, \$600,000 for 1932, and thereafter \$1,000,000 a year until 1939,⁵⁷ but this ambitious project was soon curtailed; in fact the 1932 appropriation was cut to \$400,000, and in succeeding years to \$318,000, \$65,015, and \$67,510,⁵⁸ and the commission has been able to carry on only with emergency funds granted from time to time in unpredictable amounts. An act of 1934⁵⁹ imposing a fee of one dollar in addition to the state license charge on any one who wants to hunt migratory waterfowl (the "duck stamp" bill) has brought in much needed cash; but it has been necessary to spend it wholly for enforcement and administration⁶⁰ and not at all for the purchase of new lands. The states fortunately have been cooperative, only Arkansas and Utah, of states having any large amounts of suit-

55 House Report 2265, # 8979, 70th Cong., 2nd Sess., 1929; Migratory Bird Commission report 1931, p. 7.

56 45 Stat. 1222.

57 Commission report for 1930, 71st Cong., 3rd Sess., House document 670.

58 Report for 1936, House Document 107.

59 48 Stat. 451.

60 Commission report for 1936.

able land, being slow to concur,—and even they have finally passed the required permissive laws;⁶¹ and the commission has wisely proceeded to acquire the most critical areas first, while the money was to be had.⁶² Where funds were insufficient for outright purchase, a policy of lease with option has been pursued, and several parcels have been selected from the public domain, where no purchase was necessary. An emergency conservation fund of six million granted late in 1934 made possible notable progress in 1935 and 1936, after a number of lean years.⁶³

By 1937 the commission could point to 85 permanent refuges, totalling 695,533 acres in 33 states and Alaska, a highly praiseworthy job considering the obstacles, even though the lands were scattered, mostly in small pieces, and aggregated only the area of a fair-sized county. There are also six million or more acres in large reserves created by special act⁶⁴ such as the Bear River and Upper Mississippi refuges, yet even this figure is too small beside the seventeen million acres simultaneously drained. Darling in 1934 computed⁶⁵ the wildfowl decline in 25 years at seventy-five per cent, with the redhead and canvasback approaching extinction and the mallard, teal, widgeon, shoveller, and brant rapidly dwindling. Meantime other projects conflict with the wild life programs,—dams, dredges, mosquito control, and now national defense menace existing reserves and preempt land needed for future ones, always with the argument that men come before ducks despite man's repeated failure to prosper on lands intended by God for ducks only.⁶⁶ And the upland game

61 Reports for 1931 and ff.

62 See Commission report for 1932, House report 497, p. 8 ff.

63 See Reports for 1935 and 1936.

64 Commission Report for 1936, House Report 107; Hearings, Wild Life Committee, 73rd Cong., 2nd Session., see 48 Stat. 1015.

65 *Ibid.*, p. 101 ff.

66 Commission report for 1936, House report 107; Hearings Wild Life Committee, 73rd Cong., 2nd Sess. and see p. 117—the wardens do not always get state cooperation; in 1934 two wardens defending themselves against armed hunters were locked up for their pains.

survives as best it may without benefit of federal aid, though plans for raising it on a cash crop basis have been discussed.⁶⁷ This is the picture in the United States today.

Somewhat similar problems beset the administration of the treaty in Canada, but notwithstanding the destruction by drought in Alberta and Saskatchewan they are not as severe.⁶⁸ Paradoxically, Canada, whose central government has greater paper powers than ours, admits greater provincial autonomy and greater flexibility in the regulations. The common complaint that rules are too rigid and too bureaucratically administered is less heard north of the border. Canada has not created as many refuges as we, but most of the country north of 53°, or about half the total, is still so inaccessible as to be virtually an automatic refuge. There are moreover far fewer hunters, as the population is smaller, and though the open season is often nominally longer, it is generally shorter in fact because of the early onset of severe weather conditions.

So for the northern nations we may say, good so far, but with a long way to go in the establishment of sure refuges, which are as necessary as good game laws.

And North America is not all. The impartial migrant especially in the western flyways sails over Mexico as well as Canada, and here we have only the beginnings of international or any other protection. As in Europe, taking of song birds is a regular business and many have been shipped to the United States alive.⁶⁹ Thirty thousand quail, for instance, were shipped here annually in the last decade. The hunting tourist, coming perhaps to escape the burden of restrictions at home, seems as great a danger as the native, even the native who kills for the market;⁷⁰ and meanwhile the Mexican range, limited to begin with, becomes more and more important as a winter range for water-

⁶⁷ *Ibid.*, p. 242, J. M. Beck's memorandum to president.

⁶⁸ Hearings, Wild Life Committee, 75th Cong., 3rd Sess., 1938

⁶⁹ Pearson, T. G., "Report on International Bird Preservation," 39 *Bird Lore* 459, 1937.

⁷⁰ *Ibid.*

fowl driven ⁷¹ from their California marshes as advancing agriculture and the annual preemption of more water for the thirsty cities threaten to wipe out the marshland once many hundreds of square miles in extent.

The essential unity of this and the Canadian problem was early seen, and within two years of the Treaty Act the Senate adopted the resolution ⁷² of February 9, 1920, requesting that the president propose conventions or treaties with the nations to the southward, for the protection of birds. As in the Canadian case, the State Department proceeded with the aid of the Department of Agriculture, but was soon discouraged by the existing state of affairs in Mexico.⁷³ Not till 1936 was the work to be completed; in that year a treaty was finally made.⁷⁴

The parties agreed (Article 2) to establish a closed season on the taking of birds, nests, or eggs, or their transport or sale except for scientific or breeding purposes, and a closed season on ducks from March 10th to September 1st, *to establish refuges*, to limit hunting to a four-month maximum, to prevent the killing of insectivorous birds at any time unless it was shown that they were doing harm to agriculture, and to prohibit hunting from aircraft—a provision naturally absent from the older treaty.

Article 3 forbids the international transportation of migratory birds or products thereof except by governmental permit, while article 5 places a similar ban on the import or export of *game mammals*, the first step incidentally toward international aid for such, which even more than birds are making a last stand.⁷⁵ Article 4 lists by technical family name the migratory

⁷¹ Hearings, Wild Life Committee, May 5, 1938, statement of F. C. Lincoln, p. 23.

⁷² Senate document 259, 65th Cong., 2nd Session., # 7671.

⁷³ See letter to F. L. Polk, March 8, 1920, quoted in above, p. 2.

⁷⁴ U. S. T. S. 912, 4 Malloy 4498.

⁷⁵ Especially the white mountain sheep, much sought by gunners in Mexico now that our own wild sheep are no longer available in any considerable numbers.

game and non-game birds which must be protected, and provides for the addition of others as the presidents of the signatories may agree; in the first category are ducks, swamp and shore birds, and pigeons, but not upland game, while the second covers land birds in general but not the kingfisher, crow, or starling.

By the last article the convention is to be in force for fifteen years and then from year to year.

This treaty will be seen to parallel the Canadian one in most respects and to go beyond it in some, notably in the express provision for refuges, which carries into conventional international law the proved experience of the years since 1918, and in the prohibition on aircraft which takes account of a situation not previously in existence and resembles a clause in the Africa convention. Whether it meets the problem is nevertheless a question again; ⁷⁶ it lays no restriction on the traffic in birds within Mexico,—on the contrary, a special clause in Article Two preserves the local commerce in caged live birds, a practice happily extinct in this country, which as surely withdraws the victims from the breeding stock as if they had been killed outright. Unlike the Canada treaty, this one contains no provision whatever to limit the means of killing except the aircraft prohibition; the allowed open season is longer than in the former treaty, and no special protection is afforded to species in particular danger. These damaging omissions have led one observer to damn the whole agreement as a travesty. ⁷⁷

Small as the accomplishment in this Mexican treaty may be, it is still the high water mark of Latin-American legislation. Elsewhere in this hemisphere twenty-one species of ducks and forty-five of shore birds, including many of the rarest and many which migrate between North and South America are left at the hunter's mercy; ⁷⁸ for three quarters of the shore birds

⁷⁶ Edge, Rosalie, "The Migratory Bird Treaty with Mexico" pamphlet published by Emergency Conservation Commission, May, 1936, New York.

⁷⁷ *Ibid.*

⁷⁸ Pearson, T. G., "Report on International Bird Preservation," 39 *Bird Lore* 459, November, 1937.

which breed in the north winter in the south, some going all the way to Patagonia,⁷⁹ and several, such as the upland plover, which need protection most are particular favorites at Argentine tables. Meanwhile advancing settlement and cattle grazing have greatly modified the natural face of the southern pampas and drastically reduced the area suitable for birds by drying and by drainage.⁸⁰

The West Indies are also a source of serious strain on supply, for the concentrated stream of shore birds directed twice yearly over this narrow chain of lands offers an irresistible target. Probably the worst offender is densely peopled Barbados, where snipe are slaughtered wholesale⁸¹ not only on the island's two natural swamps but on some twenty-odd especially constructed for the purpose and with full sanction of law.

Of these southern countries at least six have no protective laws at all,⁸²—Haiti, Honduras, Nicaragua, Panama, Paraguay, and Peru. The Dominican Republic has a five to seven month season on game and a limited list of protected species, but no wardens to enforce the laws. Salvador protects insectivorous birds with a law of one sentence and no teeth. Ecuador has almost no protection but under foreign pressure has created a sanctuary on the Galapagos. Chile, Cuba and Venezuela have some restrictions but nowhere near enough; Bolivia has a single decree protecting insectivorous birds between October and March, and Guatemala protects only the sacred quetzal. Only Argentina, Brazil, and Uruguay have local laws approaching adequacy, and one fears from Wetmore's report⁸³ that in much

79 Wetmore, A., "Our Migrant Shore Birds in Southern South America," *U. S. D. A. Technical Bulletin*, # 26, Washington, October, 1927, p. 2.

80 *Ibid.*, p. 17.

81 Pearson, "Report on International Bird Protection," Audubon Society pamphlet, 1936.

82 See Pearson, reports *supra* for abstracts of these laws, and Pan American documentary material on Nature Protection, Washington, seriatim. (Colombia's first law dates from March, 1941; see *Audubon Magazine*, May-June, 1941, p. 297).

83 *Op. cit.*, p. 20 ff.

of the territory covered observation is but casual and enforcement rare. Our own territory of Puerto Rico, despite the metropolitan attitude on protection, lacked good laws till 1937⁸⁴ when the local Department of Agriculture imposed regulations which set a decently high standard.

It will be evident by now that in about half America everything remains to be done. It is encouraging at least that certain quarters are beginning to take interest; an unofficial conference met in Washington in August 1937⁸⁵ to discuss measures and the Pan American conference in 1938 led the way toward a convention which in its seventh article undertakes to advance the international protection of birds. One may hope that the growing cooperation between American nations in the light of events elsewhere may bear the fruits in this sphere that the latest agreement faintly forecasts.

2. BIRD PROTECTION IN EUROPE

North America, unified in culture and tongue, and divided by but one major boundary line, has encountered appreciable obstacles in the effort to protect its avian stock. How much greater is the problem of Europe, its geographic pattern not unlike ours but its political authority split in all directions by national boundaries. Here, on the mother continent, we find that the future of bird life was a matter of serious concern to student and to government alike long before carefree America gave a thought to wild life protection, and yet the important results have been so meager as to suggest a hopelessly insoluble problem. However, lest the labor of the past be lost for want of present reward, it is here proposed to investigate the remedies sought and measures attempted, in hope of clarifying the question still unanswered; for when the troubles of the present day at last are ended, this task, not least among a thousand others, will remain and the unfound answer must be sought again.

⁸⁴ Pearson, report, 1937.

⁸⁵ Pearson, report, 1937.

Turning first to natural factors, one finds that knowledge of European migration routes remains surprisingly imperfect compared with the detailed information which has been patiently collected in America by the Biological Survey and its collaborators. The record of banded birds has charted four well defined flyways in North America¹ but the corresponding statistics of the old world amount to no more than fairly educated guesses. Some things, however, do seem to stand out: one great route lies in an almost east and west direction, from Siberia and North Russia along the Atlantic coast past the British Isles and Spain, to North Africa, another down the Baltic and North Sea coasts, thence across country to Italy and down the funnel-like peninsula which that land forms to the Mediterranean and Africa, and still another from the East of Europe by way of the Balkans to the Nile valley. Thus you have a great subarctic breeding ground in Northern Asia corresponding to that in Northwest Canada, whose inhabitants must cross the most populous areas of Europe on their way to winter sanctuary, and many of whom pass through a zone of extreme congestion in Italy where a dense and bird-hungry population lies in wait for them. This creates a situation which is worse than ours in two ways; the typical waterfowl must run the gauntlet of a far denser human concentration along the flyway, and the small bird who now lives fairly immune at least in North America is still fair game in much of Europe.

This is particularly true in the south. The French gunner still feels it his prerogative to go after such quarry as skylarks and finches, and Italy is a sort of vast trap into which the migrant flocks are beguiled² to be shot, netted, snared, and otherwise decimated, not only by the hungry peasantry which is perhaps understandable, but on a huge scale by those landlords who can

1 For the American flyways, see Lincoln, F. C., *The Migration of American Birds*, New York, 1939; on Europe the best work is Thomson, A. L., *Problems of Bird Migration*, New York, 1926, and see also Boubier, cited in Bougault, E., *Protection des Animaux*, p. 27 ff.

2 Hornaday, W. T., *Our Vanishing Wild Life*, p. 94 ff.

afford the luxury of the roccolo. This monstrous trap together with the other mass-killing devices in vogue abroad is though by some³ a greater menace than the ubiquitous shotgun. Pearson sweepingly indicts all the Mediterranean lands, though he is charitable enough to add, "The legal killing of small birds for food in Europe has behind it the usage of thousands of years. The inhabitants of some of the old countries of Europe have passed through many periods of great deprivation when the working classes rarely were able to taste meat other than what they caught in the fields and the woods. Many a comfortably fed American who cries out against the Belgian or Italian bird-catcher is a descendant from some man who served a sentence for snaring a nobleman's partridge, or was sent to an English prison hulk in the Thames for stealing his lordship's sheep." To understand, then, is perhaps to forgive; but can the wrong go uncorrected forever?

Market hunting, for food or feathers, has always been serious abroad as here, with the Mediterranean in the lead again. 400,000 birds have been known to pass the Brescia customs station in a single month, 200,000 the station at Udine.⁵ The export of quail from Africa through Europe, especially the port of London, has long been a large scale business.⁶ Great Britain's generally praiseworthy record is marred by the slowness of official action against plumage imports, London—"the giant octopus of the feather trade"⁷—fearing the loss of its market

3 Bougault, E., *Protection des Animaux*, p. 35 ff.

4 *Adventures in Bird Protection*, p. 419.

5 Herman, O., *The International Convention for the Protection of Birds and Hungary*, Budapest, 1907, p. 21.

6 Pearson, *op. cit.*, p. 417: 400,000 passed Alexandria in a year (1933). See also Herman, *supra*, p. 20 ff., and MacPherson, A. H., "Comparative Legislation for the Protection of Birds" (Royal Society Pamphlet, 1909). An act of Dec. 22, 1937 finally forbade the import of live quail; see *International Committee Bulletin* # 5, 1939.

7 Hornaday, *Our Vanishing Wild Life*, p. 117. I have not discussed the growth of feather legislation because it has never taken international form

to the continent. And to say that regulation of multinational Europe presented problems like those of multi-sovereign United States before federal regulation would be a rank understatement. The story of international protection is a troubled chronicle of well meaning efforts which end either in premature frustration, in emasculation on enactment, or in tolerant negligence when the legislative bout is finally won. Nevertheless, the efforts of the protectors have patiently continued, or did till interrupted by the renewal of the war in 1939.

The initiative came from Germany, where political preservation of birds for gentlemen's sport has been a tradition since at least the thirteenth century,⁸ and from Hungary, where the lords of Europe's great grain region have long understood the value of bird cooperation against the perpetual insect foe. In 1868, when the echoes of Sadowa were hardly still, an assembly of German farmers and foresters sought the aid of Austria-Hungary's foreign office in getting an international convention for the protection of animals useful to agriculture and forestry,—a broad objective limited at Austria's request to *birds* useful in agriculture.⁹ Proposals were circulated and well received,—Italy (!) and Switzerland responded favorably in March 1869 and France in June. The original plan was to weave a sort of net of bilateral contracts, but this was later rejected in favor of a single general convention, with details of regulation to be worked out by the several signatory states. The Swiss proposed an international administrative commission, but failed to receive

but there are many national laws. The United States incorporated an import prohibition in the 1913 Traffic Act and was followed by Britain and the Dominions (Hornaday, *Thirty Years War*, p. 201 and see the British Act of 1928). About that time the trade died out owing to fashion changes but there has been a recent revival, taking advantage of legal loopholes,—see *Bird Lore* for October, 1940 and articles in *The New York Times*. Remedial and apparently effective legislation was enacted by New York in 1941.

⁸ Herman, *op. cit.*, p. 32, who also cites acts of 1777, 1809.

⁹ *Ibid.*, p. 32 ff. This Hungarian authority has collected the data of the preconvention years in the above reference, which I have freely cited.

support and the suggestion has never been carried into law, which is probably unfortunate.

Indeed, as soon as specific proposals were made, the golden atmosphere of concord was dissipated and the tide of objections began. A list of regulations which would have banished the roccolo and other traps from the Italian scene was instantly snubbed; and so was the sound suggestion that particular listed species be given protection, on the ground that the poor Italian fowler couldn't tell the difference,—as a matter of fact, says Herman,¹⁰ he can discriminate “most nicely,” for the market price varies according to species. No such list was to be made for years. Progress was also hampered by acrimonious personal disputes, which seem always to mar the relations between earnest toilers in good causes, and by the equally customary failure of various organizations to take account of each other's work.¹¹ Yet from the general confusion emerged certain principles of protection on which most people agreed, set forth by Tschudi in 1873:¹²

(1) the complete protection of insectivorous species, (2) restrictions on the killing of others by means of license and closed season, and (3) the prohibition of large scale traps, of nest robbing, and of trade in illegal items.

Sanctuaries are not mentioned; the importance of preserving nesting sites such as old trees was spoken of but did not get very far, despite the immense importance of this question in Europe,

10 Herman, *op. cit.*, p. 48. This was proposed at the International Agricultural Congress meeting at Vienna, Sept. 19, 1873. Nesting sites and the “Tschudi principles” also were discussed here.

11 *Ibid.*, p. 62 ff. The question whether woodpeckers are noxious or not engendered much heat. An International Ornithological Committee was set up at Vienna in 1884, but the chairman lived far off at Brunswick, receiving and spending contributions independently of his secretary at Vienna, and finally they fell out altogether. Only the patronage of the Crown Prince Rudolf kept the movement from disintegration, and his death at Mayerling picturesquely ended it.

12 *Ibid.*, p. 38.

with its tendency to manicure the forests beyond the point of usefulness to wild life.¹³

The skilled and diplomatic Count Andrassy did succeed in getting the Italian signature on a joint declaration in November 1875, by which governments were to create "strict and comprehensive legislation" stopping nest robbing, some kinds of trapping and illegal sales, and imposing a closed season.¹⁴ Even the famed foreign minister was not able to get the legislation actually passed, and the Italians did nothing about it either; but embodying as it did a guarded form of the Tschudi principles, the declaration of 1875 became the basis of discussion at succeeding experts' conferences and at the Paris international conferences of 1895 and 1902 which finally did get something done. It is curious that while all the ground work was done by experts in the field, whether in government employ or not, and the delegates to the 1895 meeting were such, yet the final convention was signed by ambassadors,¹⁵ almost thirty years after Tschudi's proposals, and over thirty since the farmers' declaration of 1868.¹⁶

The French draft convention of 1895, unlike anything to date, contained three lists:—useful birds, winged game, and noxious species. The second list contains not only the creatures we should call game but also the lark, thrush, and blackbird. The rest of the draft pretty much restated the declaration of 1875, on which most delegates agreed, but the form and details of the

13 See Hesse, Allee and Schmidt, *Ecological Animal Geography*, New York, 1937, p. 543, on the results of clearing out old hollow trees.

14 Austro-Italian Declaration: 4 *Nouv. Rec.* 2d, pp. 289-90.

15 Herman, p. 100 ff.

16 Chronological note: 1868, Farmers and Foresters Declaration; 1872, Swiss proposal for international committee; 1873, Vienna Ornithological Congress and forming of *unofficial* committee; 1875, the Austro-Italian declaration; 1891, second Ornithological Congress at Budapest, which picked up pieces and revived proposals for international action; 1895, first Paris conference; 1900, third Ornithological Congress at Paris; 1902, final official conference at Paris, and convention signed.

lists were so provocative that much argument ensued and eventually the "winged game" category was withdrawn.

Eleven powers signed the Convention of March 10, 1902.¹⁷ Its first article is not a command, but the statement of an ultimate ideal. Birds useful in agriculture,—duly listed in Schedule One¹⁸—are to be protected against destruction at all times, together with their nests, eggs and young, and the list may be enlarged if desired; but it is contemplated that the result will be gradually achieved upon the enactment of measures set out in succeeding articles, which are to be taken *or proposed*.

The taking of nests, eggs, and young birds, except of the lapwing and gull, and except about dwelling houses and court-yards, is to be generally forbidden (Article 2). Transport and sale are likewise to be stopped. The construction and use of instruments for the wholesale capture and destruction of birds are to be forbidden (Article 3) but alas, the powers may proceed cautiously and by easy degrees (Article 4). The listed species are not to be taken, transported, or sold between March 1st and September 15th, but this period may be modified in the northern countries where nature might otherwise admit no open season at all (Article 5). Temporary permits may be granted to property owners, or occupiers where birds are causing real damage (Article 6) or for scientific purposes or the taking of cage birds (Article 7). The convention does not apply to poultry, or to game on preserves, but game on open lands may be hunted only in the open season, with firearms only, and only then traded in (Article 8); however northern Sweden is absolved from observing the closed season on game because of climatic factors (Article 16). Governments, finally, are authorized to permit destruction of birds harmful to agriculture, sport, or fishing; the second schedule will serve as a guide to such if there is no local list (Article 9).

The signatories are to conform their laws within three years (Article 10), and to exchange information as to their present

¹⁷ Martens, 30 *Nouveau Recueil* 2me, 686.

¹⁸ Annex to convention, see below.

laws via the French government (Article 11); and may hold more conferences (Article 12) but this they never did. The thing was to come into force a year after deposit of ratifications, was open to adherence of other states, and was to stay in force indefinitely although individual states might withdraw upon giving one year's notice (Articles 13-15).

The first schedule of the annex lists about a hundred and fifty species of useful birds, including most passerine forms but not the grain-eating finches, nor for some reason most thrushes, though the starling, now regarded even in Europe as a pest, is protected. It also lists the stork, the woodpeckers, most owls, and a few others. Blasted as noxious are the hawks almost without exception, the eagle owl, the crow, magpie, and jay, and most fish-eating waders and ducks,—a list which any ornithologist will find subject to almost boundless criticism.

The eleven signers eventually ratified this convention, unlike its African contemporary, and it became effective¹⁹ on December 12, 1905, after almost forty years of parturition. Notably absent from the signatories are Great Britain, the Netherlands, Italy, Russia, and Norway, a lack partially cured by concurrent national legislation in the case of the first but not elsewhere, so that there are serious gaps in the structure even apart from imperfections in the convention itself; indeed Herman points out²⁰ that matters were actually worsened in releasing Italy from the 1875 declaration and substituting no obligation in its place.

The convention is directed to very different ends from those of the American treaties. Our laws pay lipservice to the cause of agriculture but actually emphasize the preservation of game, especially waterfowl, and are essentially game laws of the closed-season type,—the rest is trimmings. The European act mentions waterfowl only to condemn certain of them, and passes by shore and game birds almost entirely. Strictly utilitarian in

19 Signers: Switzerland, Germany, Austria-Hungary, Belgium, Spain, France, Greece, Luxemburg, Monaco, Portugal, Sweden, the first and last with some qualifications. Herman, *op. cit.*, p. 117.

20 *Op. cit.*, p. 38.

mood, it aims specifically at conservation of the food supply by the protection of its protectors, a totally different emphasis. It also goes much farther into detail as to the sole means whereby birds may be taken; but we must fairly add, that these clauses are lacking in the American treaties, not from inadvertence, but because netting, wholesale trapping, and so on, are not carried on here.

The substance of the convention is largely good, and tested by experience. Only the division into useful and noxious lists is thoroughly bad, and it is no answer to say that the signatories are not *required* to prosecute the latter;²¹ for if the international stigma is not to be construed as a hint, why is it in there at all?

But the structural weakness of the convention is clearly visible. Article 4, necessary perhaps if the thing was to be signed, completely empties it of real compulsion, and has made it not only possible but lawful to ignore the proposed program in practice; the actual course of European legislation and enforcement suggests that the convention's existence has but little influenced the attitude of the nations toward protection. Great Britain who never signed the convention and Germany who did are alike notable for their excellent protective legislation and for the support which it finds in public sentiment; France and Spain, nominally bound by the act of 1902 (indeed the French have boasted of snatching the initiative from Austria), make almost as little of it as Italy, who backed out at the very beginning. Our treaty with Canada is very limited in scope, but it has worked within those limits; we cannot say this of the European one.

MacPherson, summing up the situation a decade after the Paris conference,²² found fairly extensive and precise legislation in eight states,²³ the British situation good in general but weak

21 As, for example, Bougault says; *op. cit.*, p. 50.

22 MacPherson, A. H., article, *supra*, p. 91, 1909.

23 Austria-Hungary, Belgium, Denmark, France, Germany, Great Britain, Netherlands, Switzerland.

in its protection of nests—except in the Isle of Man!—, and virtually nothing done in Italy, Spain, Portugal, or any of the Eastern countries. He credits France with a good law; but Bougault says that in 1936 there was still no general statute on nets and traps,²⁴ the matter of regulation being left with the departmental prefects and that of enforcement with the local public sentiment, which tended to vary directly as the latitude. Once again it is the Mediterranean region that does not cooperate.

Despite all its shortcomings, the convention at least is still law, having been one of those continued in force by the Treaty of Versailles.²⁵ Yet the immediate legacy of the last war was a period of lapsed interest exactly analogous to that noted in the previous chapter and it is not until late in the twenties that we find active organized interest in further protective measures. These several proposals will now be examined, as a possible base for new international legislation; unhappily we cannot tell a story of concrete advance, for none of these numerous propositions have yet been carried into international law.

In 1927, the International Congress for the Study and Protection of Birds, meeting appropriately at Geneva, urged that the League take action,²⁶ and summon a congress of *governmental* delegates to draw up a new convention, with special attention to the stopping of shooting in spring. The International Institute of Agriculture in Rome was exhorted to supply the necessary material. The League, however, did nothing.

²⁴ *Op. cit.*, p. 46 ff.

²⁵ Part 10, sec. 2, art. 282, # 25. Parties in 1936 (*Adventures in Bird Protection*, p. 405) were: Austria, Belgium, France, Germany, Greece, Hungary, Luxemburg, Monaco, Netherlands, Portugal, Spain, Sweden, Switzerland. Apparently the succession states never adhered.

²⁶ Pearson, *supra*, p. 409 ff. This organization was founded in 1925. I should also mention here the work done by such bodies as the International Committee for Bird Protection (1928), the International Office for the Protection of Nature ("Brussels Bureau," 1928), and the American Committee for International Wild Life Protection (1930). I have refrained from discussing them in detail only because their work has not consisted of proposals for specific international action.

The British government, characteristically, wanted to do the job differently. We shall find the same thing in the matter of whaling regulation, and it is typical of the whole history of international organization including the founding of the League itself that the continental members like to work through definite international bodies toward comprehensive and far-reaching conventions, while the British tend to an informal approach, seeking the negotiation of particularized agreements by particular interested parties. In the same year of 1927, the London government suggested to representatives of Germany, Belgium, the Netherlands, Denmark, Finland, and Sweden that joint protection be specifically given to migrant marsh and sea birds, for the first time.²⁷ A conference accordingly was held at London which noted the actual diminution of these birds²⁸ apparently caused, in the delegates' opinion, by oversized guns, flares, motorboats, and decoys (which in Europe means baited traps). Such species as ducks and plovers were being taken at a rate of 30,000 or more a year in Germany, Denmark and Holland *respectively*, that is, market hunting appeared to be carried on without hindrance.

The delegates recommended:²⁹ (1) a closed season from February 1 at the latest till such time as the young can fly well, and on swans at all times, (2) prohibition of sales in the closed season, (3) prohibition on the use of motor boats, flares, or nets in hunting waterfowl, and (4) the creation of breeding sanctuaries. But it was all informal, and at London as at Geneva, nothing resulted.

The Amsterdam meeting of the International Ornithological Congress adopted some resolutions, too, in 1930.³⁰ It was proposed to stop the bounty system on birds of prey, the pollution

²⁷ Van Tienhoven, G. P., *Protection Internationale des Oiseaux*, Paris, 1932.

²⁸ *Ibid.* and Bougault, *op. cit.*, p. 90 ff.

²⁹ *Ibid.*

³⁰ Pearson, *op. cit.*, p. 412.

of the sea by oil, and the trade in live quail. Similar questions were weighed by the Conseil International de la Chasse at its Paris meeting in 1931.³¹ As before, no action followed.

Most comprehensive of all was the program detailed by the Second International Congress for the Protection of Nature, drawn up at Paris in 1931.³² Apparently it was feared that amendment of the old convention, with its obsolete distinction between useful and noxious species, would be hard, and might indeed end only in the destruction of such controls as already existed; so twelve specific recommendations were made, to be translated into independent *national* legislation without more ado:

(1) The protection of *all* wild birds, so far as possible, within three years, (2) the prohibition of killing all wild birds or trading in them or the products thereof, with certain exceptions, (3) the prohibition of nest robbing, and (4) of the import or transport of birds or the products thereof, (5) the making of exceptions to all this for birds doing real damage to agriculture or fisheries, (6) the designation of all edible wild birds, except songbirds, as "game" and subject to at most a four-month open season, (7) the prohibition of nets, traps, and so on, except for certain aquatic game and cage birds, (8) the regulation of egg-collecting for commercial purposes, (9) the imposition at most of a three-month season for taking cage birds, (10) with exception for science and breeding stock, (11) the taking of measures against damage from oil and lighthouse beams, (12) the establishment of breeding reserves.

The delegates who passed these recommendations loudly lamented the discouraging number of abstentions from the 1902 Convention, the consequent lukewarmness among the signers in the matter of enforcement, and the continued preeminence of

31 Pamphlet published by the C. I. C., Paris, 1932.

32 *Minutes of the Congress*, Paris, 1932, p. 136 ff.

Italy among the worst offenders.³³ The French pointed out³⁴ that Article Four was sufficient to make the convention almost a dead letter in their own country, and that the generalities of Article Ten, hopefully thought by some to cure it, failed by their very terms to do so. The striking out of the "winged game" category was generally felt to have been a mistake, and the French now hoped to see the omission corrected. In addition, the effects of clearing and draining, present of course for years if not centuries—seem here to have been seriously considered for the first time.³⁵

What is the drift of all this recommending? The convention of 1902 ought not only to be enforced, but broadened as well, and made to apply to birds in general with the necessary exceptions for science and actual damage doers; special aid ought to be given to waterfowl and game; sanctuaries should be provided against the destructive works of man; and the new developments in hunting technique should be caught up with. The dangers of oil pollution and dazzling lighthouse flares will be separately considered below. This is the problem in summary.

The apparent unanimity of sentiment in these successive meetings should not obscure certain facts. First, we have here the views of experts and notably interested persons, not for the most part the active cooperation of governments. Here is the critical gap which has so far not been bridged. Second, the meetings have repeatedly been marred by personal antagonisms among the delegates, who as a class seem almost as prone to internal squabbles as the peace advocates.³⁶ And third, the determined nationalism of all important states makes it nearly impossible to get rid of the right to make or not make a nation's

33 *Ibid.*, p. 142 (Chapellier).

34 *Ibid.*, p. 143 ff.

35 *Ibid.*, p. 135 and see article by Van Tienhoven in *Bulletin* # 2 (p. 18) of International Committee for Bird Protection, on effects of the modern drainage program in the Netherlands.

36 This finding is based on correspondence in the files of the ACIWLP.

own laws without question or interference from abroad.³⁷ The sole international measure put into effect since 1902 remains an agreement of 1931 between Sweden and Denmark;³⁸ this barred (1) the shooting of swans, (2) the use of nets on seabirds, (3) of shotguns over twelve gauge and automatic rifles, (4) of motorboats, except for sealing, between May and October, and at some points all the year, and (5) of duck decoys. This is fine, but local.

In 1935 the northern nations meeting in conference at Brussels submitted on behalf of the governments of Norway, Sweden, and Finland a complete draft convention designed to replace the old act of 1902. It has never been adopted, nor even reduced to final form, but remains the best basis achieved so far on which a new accord could be rested, despite its partial nature. Like the proposals detailed above, it is an effort to repair the misconceptions and omissions of the first convention;³⁹ it is itself inadequate in respect to sanctuary provisions and does not seem to take care of the waterfowl situation too well.

By the first article, it aims to include all birds whatever except as listed in an annex, which comprises most crows, gulls, herons, cormorants, sparrows, thrushes, and certain owls and hawks,—that is, the eaters of fish, grain, and poultry. The next would create two categories of birds, one to be protected at all times, including most small birds,⁴⁰ and a second to be protected between March 1st and June 1st at least, and longer if desired. This pair of articles is an attempt to extend the scope of the older law, and to minimize, though it would not quite abolish, the concept of noxious species.

³⁷ *Ibid.*

³⁸ 126 *L. N. T. S.* 255, # 2888, Oct. 9, 1931.

³⁹ Copy in possession of ACIWLP.

⁴⁰ To be included: all song-birds under 60 grams (about two ounces) weight, oriole, dipper, hoopoe, nightjar, bee-eater, roller, cuckoo, certain falcons, kite, stork, certain waders, swans, crane, certain doves, avocet, little gull, and tern. The first category would cover nearly all European song-birds except the larks and thrushes.

Article 3 substantially reenacts the existing law on the taking and shipping of eggs, nests, and young. Article 4 extends the old rules on methods of capture, by forbidding hunting by night or with torches, using decoys, nets, or other tackle for taking water birds, or using poison, or hunting on snow, or from motorboats, except at sea, or with repeaters or automatics over two-shot twelve gauge. The weasel clause—old Article 4—is properly to be struck out.

Provisions for regulating traffic in birds and their products are to be continued (Article 5) and those lawfully taken to be marked. Permits to destroy birds actually shown to be harmful would continue to be granted (Article 6), or for scientific and caging purposes (Article 7). Article 10 would transfer the central information office from the French government to the International Institute of Agriculture at Rome, presumably because of its professional and non-political nature. This introduction of a professional administrative organ, to keep up interest and activity, would be a most noteworthy advance on the present situation. Otherwise the old convention would be continued about as it now stands, with the northern custom of taking duck and plover eggs, for subsistence and not for sale, expressly preserved. As noted, the contracting governments would not be required to create reserves and as before game is given no special aid; governments are simply invited (Articles 15 and 16) to undertake its protection when necessary. Here again are seen concessions in the hope of more general ratification. But despite imperfections, this is a clear advance on 1902, and one hopes that it will receive official attention when convention-making is fashionable once more.

The draft was in fact discussed at Vienna by a meeting of the Conseil International de la Chasse in 1937⁴¹ and its adoption in general was recommended, subject to the placing of *all* birds in the same category (Article 6 takes care of possibly

⁴¹ Conseil International de la Chasse, report, 4th session, Paris, 1937, p. 23 ff.

harmful ones) and the addition of articles requiring (1) the establishment of reserves and (2) protection against wires, lighthouses, and oil pollution.

With this our examination of reform proposals comes to an end. We must regretfully conclude that despite the need of change so clearly shown by the proposals themselves, put forward with much effort and the best of intentions, nothing really effective has been accomplished at the international level. The French government continued, at least till the war, to issue a million licenses a year to hunt the vanishing wild duck,⁴² and Sweden has had to stop all duck shooting in her lake district. In the North generally, nest robbing continues unabated; even the tundras of the Russian Arctic are menaced by the growth of exploitation there, and the government instead of protecting its diminishing wild life is actually said to lend a hand,⁴³ gathering eggs as a desirable commercial source of albumin.

The southern nations, always notable for their lax enforcement, protest that birds insectivorous in the northern summer become fruit eaters in the chilly season, (the same type of charge is made in America against, for example, the bobolink) and deserve to be netted and shot when they arrive at the Mediterranean.⁴⁴ Ghigi, whose genuine interest in protection no one can dispute, presses the question of food for the poor,⁴⁵ and claims that local legislation has abated the net menace. The roccolo, he says, has been almost wiped out by high taxation, and the birds are apparently no longer in danger. One hopes so, but unfortunately the Italian restrictive measures, slow to come anyway, were swept away by decrees of the Agricultural Depart-

⁴² International Committee for Bird Protection, Report 1937 (British section), p. 13 ff.

⁴³ Lowe, P., International Committee report, 1937, p. 13 ff.

⁴⁴ Ghigi, A., "Protection of Birds in Italy," *International Committee Bulletin*, 1935 (# 4), p. 26 ff. See also Csörgey, T., "Hungary needs a new Treaty," *I. C. Bulletin* (# 2), 1929, p. 16.

⁴⁵ Ghigi, *op. cit.*, p. 28.

ment in 1935; in that year the government, to combat the menace of sanctions, urged all and sundry to kill wild birds and animals for foods, to save meat, and restrictions have been but slowly reinstated.⁴⁶ What the current situation in Europe must be one can only guess; but the gloomiest guess would most probably be right.

A NOTE ON THE LIGHTHOUSE PROBLEM

The attraction of lighthouse beams for migrating birds is a special and peculiar problem regarding which international action has been sought but not up to now achieved. Observers have long been distressed by the loss of life resulting when small birds dazzled by the light and apparently mesmerized by it fly round and round the fatal object till they fall exhausted, or are killed by striking the tower itself. Various preventives have been proposed. The ornithological congress at Budapest, in 1891,⁴⁷ suggested a net around the light, but this was never followed up, being felt to be both impractical and useless.

Some thirty years ago J. P. Thyse⁴⁸ of Utrecht experimentally determined that perches placed on the lighthouse,—but below the light itself to insure visibility—afforded rest to the birds, who apparently thus collect their wits and are able to travel on. The Netherland government, acting on his suggestion permitted the installation of perches on the Brandaris light at Terschelling and elsewhere; and results were so good that the British government presently authorized the Royal Society for the Protection of Birds⁴⁹ to make similar installations at St. Catherine's in the Isle of Wight and the Caskets in the Channel, and later at Spurn Head and South Bishop (Yorkshire and

46 Pearson, T. G., "Report on International Bird Preservation," 39 *Bird Lore* 459, 1937, p. 461 ff.

47 Bougault, E., *Protection des Animaux*, p. 88, citing *Bulletin de St. Hubert Club de France*, June, 1927, p. 145.

48 Grant, W. W., "Protection of Migrating Birds in England," 18 *Bird Lore* 294, 1916.

49 *Ibid.* and same issue, p. 374.

Pembroke). Germany later adopted the idea; France has installed perches at Cap Gris Nez and Italy at Punta Penna in the Adriatic and Punta Verdi near Genoa.⁵⁰ But there would seem to be much wider room for adoption as indicated by certain of the recommendations in the foregoing section, and the idea is not universally favored. The Belgians for instance think it unnecessary in their case as most of their lights are of the short flashing type.⁵¹ Further comment here seems needless since there has been no concerted international action.

3. BIRDS AND THE POLLUTION OF THE SEA BY OIL

We have already referred to the destruction of wild life by contact with waste oil, released by ships to float upon the surface of waters. This is a distinctively modern phenomenon; a striking example of the destruction wrought by industry upon nature. A hundred years ago "rock oil" was a medicine—and a curiosity; in 1914 oil-burning ships and tankers to a tonnage of a million and a half each plowed the sea; and twenty years later these respective tonnages were approaching thirty and eight millions, or almost half of all important shipping afloat.

It has been the regular practice in the past for ships of all these classes to flush out their empty oil tanks and chambers at the end of each voyage, thus discharging into the coastal waters and navigable streams a viscous black slime, a sort of emulsion,¹ defying the old legend that oil and water do not mix and fouling the surface often for acres upon acres with an airproof scum, dirty, inflammable, and suffocating. The evil results are many. A harbor covered with oil is in constant peril of disastrous fires, and such repeatedly occur as at Belfast in 1922.² The slimy film, carried by wind and current, may also find its way to shore beaches and ruin them for recreation purposes; this has been

⁵⁰ Bougault, *op. cit.*, p. 90.

⁵¹ *Ibid.*

¹ Barclay Smith, note in 32 *Bird Lore* 397, October, 1930.

² Adix, "Pollution des Eaux de la Mer par les Hydrocarbures," report to Conseil International de la Chasse, undated, p. 2.

a perennial nuisance on the south coast of England, and despite the local legislation it is impossible to walk along a beach fronting New York harbor today without cumbering one's shoes in greasy muck.

Lastly the results to marine life are serious.³ Floating plankton are killed outright. The interposition of an impassable film between air and water prevents oxygenation of the water, weakening and to a degree actually suffocating the fish and shellfish in the affected area.⁴ It is even said that typhoid then more readily attacks the oyster beds, with all the consequent danger to human health,—a serious matter to the United States where the oyster industry alone is worth fourteen millions annually.⁵

This poisoning works a depletion of the food supply and thus does indirect damage to marine birds,⁶ but there is direct damage as well. Birds alighting on the oil become smeared with it, often so badly that flight is impossible; literally bogged down, they can escape neither from storms nor from animal enemies.⁷ Some apparently are drowned in their efforts to rid themselves of the encumbering material, or becoming exhausted by their struggling meet death in some other way. Moreover, the clotting of the feathers spoils their insulating power, body heat escapes⁸ and chill water gets through, inducing pneumonia. Such a catalogue of ills clearly calls for some action, as the oil-emulsion is not readily self-dispersing; while it does eventually oxidize and disintegrate (otherwise, according to Kruk,⁹ 6000 tons of oil

3 *Ibid.*, p. 3.

4 This may have contributed to the depletion of the fisheries in the North Sea; see *The Naturalist* for January, 1927.

5 U. S. Bureau of Fisheries report, 1925, p. 172.

6 "The International Conference on Oil Pollution," 28 *Bird Lore* 312, 1926.

7 Adix, *op. cit.*, *passim*.

8 *Ibid.*, and see Bougault, *op. cit.*, p. 72, quoting L. Ternier, report to C. I. C. 1931 on effects of oil.

9 Preliminary Conference, Washington, 1926, minutes of meetings, p. 82.

would cover the Mediterranean) this occurs only after a very long time.

The economic effect of pollution on fisheries, the spoiling of the beaches, and the menace of fire have collectively been enough to bring about legislative action in abatement of the oil pest as regards certain areas; let us hope that the birds have shared in any benefits resulting. Great Britain seems to have acted first, and with the blessing of Mr. Stanley Baldwin the "Oil on Navigable Waters Bill" became law on January 1st, 1923.¹⁰ This forbade the discharge of oil in British territorial waters, and Northern Ireland was included at its own request; while corresponding action was taken in other British lands.¹¹ American legislation was soon to follow; in 1924 the Oil Pollution Act went onto the books and was paralleled by enactments in Denmark, France, Italy, Netherlands, Portugal, Spain and Sweden in the matter of harbor dumping.¹² All this is said to have reduced the evil in and about harbors, but of course had no effect on the high seas.

It being evident that the matter was a supranational one, both Great Britain and this country took steps looking to an international conference. In 1922 Congress by joint resolution urged that such a meeting be called, and brought about the appointment of an interdepartmental (State and Commerce) committee to study the situation. The committee, which promptly began its work, was at first embarrassed by its total ignorance of the task before it,¹³ but pursued its research with diligence nevertheless, and was able to report to the Secretary of State on March 13, 1926.¹⁴ Its conclusions were sweeping; virtually all agencies in

10 Pearson, T. G., *Adventures in Bird Protection*, 1937, p. 379.

11 Adix, *op. cit.*, p. 2. Measures were taken in South Africa, Canada, South Australia, New Zealand, Bermuda, and Malta.

12 Pearson, *op. cit.*, see also "To Clean the Ocean of Oil," article in *Outlook*, May 5, 1926.

13 *Ibid.*

14 "Preliminary Conference on Oil Pollution," 20 *American Journal of International Law* 555, July, 1926.

contact with oil were potential sources of pollution, and the actual facts found fully bore out the complaints which had stirred up the whole investigation.¹⁵ On the basis of this report the government invited the representatives of twelve nations to a conference at Washington, which all but one duly attended in June.¹⁶

Ex-Senator Frelinghuysen opened the conference on June 8,¹⁷ and promptly narrowed its scope by proposing that in spite of the existence of a high seas question, the conferees limit themselves for the present—in the interest of real accomplishment—to measures in regulation of coastal waters, and leave the rest to a later time, when adjustments had been made and experience gathered. This qualification, though perhaps necessary, meant that only a partial answer could even be hoped for.

When committee discussions began,¹⁸ it appeared at once that the nations were not agreed on the scope of the mischief. The British warned that conditions remained bad despite legislation, especially in the major port estuaries. The Canadians seemed disposed to concur, but the Dutch and the Germans boasted that strict local legislation and improved methods had done wonders. From the conflicting conversations emerged a depressingly hazy idea that conditions seemed to be improving, and a much clearer idea that a lot still was not known about the problem. Even the critical question of how much discharged oil is a nuisance proved impossible of exact solution, and the American suggestion that a "visible film" (about 0.05%) be fixed

15 Information was mostly gathered from reports of consuls in the maritime countries, sent in response to a circular of August 30, 1922. See Preliminary Conference minutes, p. 26.

16 Present were Belgium, Denmark, France, Germany, Great Britain, Italy, Japan, Netherland, Norway, Spain, United States, Sweden; Greece, though invited didn't come, but Portugal sent an observer.

17 Preliminary Conference, minutes, p. 4 ff.

18 *Ibid.*, p. 32 ff.

as the upper limit of tolerance was adopted for want of a better standard.¹⁹

What agencies should be subjected to control? This proved easier. The convention was to apply to all seagoing vessels, except naval ones, which carried crude or diesel oil in bulk as cargo or as fuel.²⁰ How much territory should be covered? This made trouble; the Canadians wanted to cover the whole watery world, and so apparently did some of the United States delegates in spite of their chairman's speech, but the British held out for, and got, broad coastal zones.²¹ The application of the convention beyond territorial waters proved curiously baffling till Judge Stephen Davis pointed out that after all, signatories could impose any rules they liked on their own ships, and should agree to require of their own ships the observance of other signatories' coastal zones though these should extend beyond the territorial sea.²² So it was finally agreed that nations might adopt such zones as they saw fit but not over fifty miles wide except where special conditions such as configuration, winds, currents, or fishing grounds made a wider belt desirable.²³

Should vessels be compelled to install modern separators, that would make oil-dumping at any point unnecessary? This seemed too sweeping a command, and to risk working undue hardship; so the conference decided to stop with a recommendation for their use, and a bait in the form of remission of tonnage dues with respect to the space taken up by such machinery.²⁴

Then the parties agreed to exchange full information, to send each other maps of the coastal zones, and to set up a central

19 Preliminary Conference, 2nd meeting, p. 74 ff., especially p. 118.

20 Preliminary Conference, 3rd meeting, p. 142.

21 *Ibid.*, pp. 218, 236 ff.

22 *Ibid.*, p. 296.

23 Preliminary Conference, 4th meeting, p. 310.

24 Preliminary Conference, 5th meeting, p. 318 ff.

agency. The convention and final act were duly signed on June 16, 1926.²⁵

The whole is cautious in tone, and the prime provisions in respect of zones (Article 1), oil discharge (Article 2), vessels affected (Article 3), and establishment of a central control agency (Article 7) are permissive only. The sole mandatory clauses relate to exchange of information (Article 1c), government responsibility for naval vessels (Article 4), respect for each other's zones (Article 5), and remission of dues on separators (Article 6),—the relatively minor and corollary clauses of the agreement.

But it hardly matters, for the convention never came into force. It was to become effective with the deposit of five ratifications in Washington, and only Great Britain, Canada, and the United States itself ever ratified. The hard fact is that even the delegates of most of the continental countries took only a perfunctory interest and thought the evil overrated, while the home governments and the public took no interest at all.²⁶ Rowley²⁷ blames the familiar triad of Germany, Italy, and Japan for the fiasco, but the indifference was wider than that.

There have been a few attempts since to revive international or to strengthen national action. In March 1930²⁸ a new bill was introduced in the United States House of Representatives which would have given enforcement power to the Migratory Bird Act authority as well as to the existing one, but even this mild thing failed to pass, the Standard Oil Company being opposed. The next year a bill was introduced in Parliament to compel the installation of separators, but though it passed two readings it perished with the Labor government.²⁹ In France,—

²⁵ Preliminary Conference, minutes, p. 420 ff.; and for summary see *Final Act*, pp. 430 to 440.

²⁶ See 31 *Bird Lore* 376-7, September-October, 1929.

²⁷ Rowley, F. T., pamphlet published by Massachusetts S. P. C. A., 1931.

²⁸ House of Representatives 10625, introduced March 10, 1930, see 32 *Bird Lore* 244.

²⁹ Rowley, *op. cit.*

which had reserved its vote at the 1926 conference—the Ligue Française pour la Protection des Oiseaux attempted by a circular addressed to twenty-four navigation companies to find how things stood, but elicited a lone reply curtly saying that separators had been installed on oil burners where practicable. The signature was illegible.³⁰

Finally the Conseil International de la Chasse pressed action on the League of Nations,³¹ in 1931.

Moved apparently by this recommendation and by others which we have mentioned before the League actually took up the question. The British government called it to the attention of the 1934 Assembly and the matter was referred to the Communications and Transit organization³² and thence to a committee of experts which sat in November. Its report rehearses the now familiar evils and the equally familiar conflicting list of national views. On receipt of the report the Russian representative moved that the Council authorize the Organization to do all possible to facilitate the adoption of a convention, and the Council did so authorize on January 11, 1935.³³

Accordingly the Secretary-General requested information of the nations on the following specific points:³⁴

- (1) What is the effect of oil pollution on birds, fisheries, resorts, and harbor fires,
- (2) what is its effect on the fishing industry's different branches,
- (3) should separators be required,
- (4) or at least on new ships,
- (5) what separators are available,
- (6) which are available in commercial and naval ports,

30 Second Congress for the Protection of Nature, proceedings, 1931, p. 155

31 Bougault, *Protection des Animaux*, pp. 79-80, 1937.

32 C. 527, 1934, VIII, Dec. 8, 1934.

33 C. 574, 1934, VIII, Dec. 20, 1934.

34 L. N. 8 Transit, 1935, VIII, 5.

- (7) how adequate are the port facilities in this respect,
- (8) is there any evidence of pollution at sea.

We shall not here attempt an analysis of all replies. F. C. Lincoln for the United States estimates that in the years before 1930 some 5500 tons of oil were dumped on the high seas off New York, annually, of which 17 per cent reached the shore, but conditions seem to have improved after that, perhaps as much because of the decline in seagoing commerce as of careful handling. France found that damage was chiefly to the fisheries, the prevailing currents in the channel carrying the oil away from the French shore proper. Great Britain found the situation bad altogether, and Canada alleged it serious also, but Newfoundland claimed to have no trouble at all. Ireland, the Netherlands, Sweden, and Denmark found the oil "most destructive" but Norway "rarely noticed" any difficulty.³⁵ The total impression is one of still unresolved confusion.

And with this collection of unhelpful replies the story lamely stops. In September 1936³⁶ the League was reported to be still brooding over the question, but worse things were in store for the League of Nations and no further word has been heard on oil pollution. Whether the offshore situation in Europe in 1936 was satisfactory remains open at least to reasonable doubt; but the situation today can admit of no doubts whatever. The oil discharged from war-sunken shipping must surpass the worst visions of those who sought so vainly in the days of peace to end this evil. To the human victims of an inhuman day we may confidently add an untold number of maritime creatures.³⁷

35 Replies, L. N. 8 Transit, 1935, VIII; see also replies to questions circulated by C. I. C. in 1935, ACIWLP files.

36 *Bird Notes and News*, summer number, 1936.

37 About their only friend remaining seems to be a Mrs. Yglesias of Cornwall, who was reported at one time to be de-oiling about 700 gulls a day. *Time*, September 16, 1940.

CHAPTER III

CONSERVATION OF MARINE MAMMALS

I. THE FUR SEALS

SEAMEN of the Czar, heedless of storms, fogs, and gloomy skies, carried the arms of empire into the Bering Sea. Its shores then swarmed with a rich harvest of fur-bearing animals of many kinds, and a diligent massacre began, with such effect that half a century after the discovery of Alaska¹ the priceless sea otter was already rare, and hunters had turned to the Northern fur seal (*Callorhinus* sp.), which had been seen to migrate through the passes of the Aleutians though its breeding place was till that time unknown.

It was soon discovered. In 1786 Gerassim Pribilof, searching the waters of the Sea, saw before him through a lifting fog the stark and rocky islands that bear his name.² So many were the animals upon the shore that the first hunters could hardly find a place to land³ and a systematic butchery was immediately undertaken. A commercial company—the Russian-American—was formed, Aleuts were imported to colonize the islands, till then without human population, and in 1799 a monopoly of the whole Alaska trade was granted to the company in consideration of its paying the administrative expenses, an arrangement which lasted till the year of the cession to the United States.³ Actual market figures on the early years are impossible to get; but we do know that though a mere 40,000 skins were taken the first year—along with 2000 otters and 15,000 pounds of walrus ivory—in the four years after 1800 700,000 surplus unsold skins spoiled for want of care.⁴ So there must have been money in it.

¹ That is, before 1780; see House report 295 (# 6129), 62nd Cong., 2nd Sess., Feb. 3, 1912.

² Lembkey, W. I., memorandum on history of the seal islands, in *Matter on Seal Islands in Alaska*, # 6113, 62nd Cong., 1st Sess., July 19, 1911, p. 334.

³ # 6129 *supra*, pp. 2-5.

⁴ *Ibid.*, p. 4.

Partly at least for this reason, an imperial ukase issued on September 7, 1821⁵ reserving to Russia all the Pacific coasts north of 51° on the American side and $45^{\circ}50'$ on the Asiatic, and warning all foreigners to stay a hundred miles from the coast anywhere north of these limiting points. John Quincy Adams, spurred by the American whaling interests, promptly protested, and so did the British government;⁶ the Russians accordingly receded in part from this extreme position, and by conventions of 1824 and 1825 respectively the ocean was opened again in consideration of American and British promises to plant no shore stations north of $54^{\circ}40'$. Meantime the killers took their sure toll; by 1835 the herd, which may have numbered as high as five million in the year of the discovery,⁷ was down to 250,000 at most, and as a result of land killing only.⁸ The government forthwith imposed a closed season for fifteen years, and on raising the ban in 1850 forbade the hunters to kill females. The resulting policy of taking only the two and three year old bulls proved sound, and the herd steadily increased for the next seventeen years. Then Seward made his famous purchase, and the seal islands passed to American sovereignty with the other contents of the proverbial icebox.

There are several islands in the group, but only two of significant size, St. Paul about fourteen miles by eight, and St. George about twelve by five, some forty miles away.⁹ On a score or more of fringing beaches between the headlands, the male seals "haul out" in May or early June, there to do battle for the females as they arrive. Being of polygamous habit, the biggest males, outweighing their brides by as much as six to one and fit

5 I. Moore's Digest, 890, 891.

6 *Ibid.*, pp. 891-892, and Henderson, J. B., *American Diplomatic Questions*, New York, 1901, p. 6.

7 But probably never much over two; Evermann, B. W., "The Northern Fur Seal Problem," 9 *Scientific Monthly* 263, 265, 1919.

8 # 6129 *supra*, p. 4.

9 Lembkey, *loc. cit.*, and solicitor's report, same volume, p. 378 ff.

to serve up to fifty cows or even more, corner most of the supply, while the losers retire to roar in disappointed solitude at the other end of the beach. The female who has dropped her single pup at the beginning of the summer, is started on the next before the season ends; so that she is pregnant most of the year and all of the time at sea. For both sexes quit the land in late fall and do not return till the following spring; in this long interval they migrate coastwise far and wide, even to the waters off California,¹⁰ but important to our problem is the fact that *all* return annually to the Pribilofs except the much smaller herds which breed on the Commander Islands in the western Bering Sea and on Robben Reef in Japanese waters. The whole race is thus vulnerable to human agencies on and about a very limited breeding range.

The American administration started smoothly enough; a series of laws¹¹ designed to protect the fur business was enacted between 1868 and 1873, and following the Russian model the sealing privilege was leased for twenty years to the Alaska Commercial Company, a California corporation.¹² The lease forbade the taking of females or any animals under a year, or killing with firearms or after August except for native food, or more than 100,000 seals in any one year; the herd was accordingly exploited on the traditional basis to the tune of just about 100,000 a year except during the glutted market years of 1877 and 1883.¹³

Then came a new and lethal menace—the hunting of the seals at sea. The gathering herd, following in a general way the hundred fathom curve,¹⁴ bottlenecks through the Aleutian passes and

10 Henderson, *op. cit.*, p. 11. The males probably range less far than the females.

11 R. S., 1954, 1976.

12 # 6129 *supra*, p. 5.

13 Henderson, *op. cit.*, p. 12, Evermann, *op. cit.*, p. 265, Lembkey, *op. cit.*, p. 335; the number taken dropped only to 75,000 even in the two years indicated.

14 Jordan, D. S. and Clark, G. A., "The Truth about the Fur Seals, Bureau of Fisheries *Economic Circular* # 4, 1912, p. 3.

is then still further concentrated in an easily assailable mass as it nears the breeding ground. Commercial hunters of the maritime nations, especially Canada, being excluded from the land killing by American territorial law, could not resist the lure of so much potential wealth swimming under their very bowsprits just offshore, and proceeded to prey upon the migrant seals. This seems to have begun about 1870,¹⁵ and its evil effects were soon felt. For it is difficult to distinguish between male and female in the water, and of course no effort was made to do so; as a result the killing of the cows so disastrous before 1835 was renewed—and with greater waste, for the body of a seal killed in the water frequently sank before it could be recovered, to the impoverishment of herd and hunter alike. Nor is this all; for when the cow has born her young, she must return daily to the sea for several weeks to find it food. There she is again exposed to the sealers' guns, and the pup condemned to sure starvation if she does not return.

The United States government came to the rescue of its herd and its company. In 1886 three British Columbian schooners were overhauled and their masters sentenced for poaching on our sealing ground.¹⁶ The British minister protested; and Secretary Bayard proposed an international conference, to straighten the question out.¹⁷ Several of the powers looked upon this with favor, but Canada refused to hear of compromise, and so seizures and protests were alike renewed. It is difficult to hale an accused nation before a jury of others who have no stake in the matter in controversy. Blaine, who moved into the State Department with the change of administration in 1889, took a stronger line than his predecessor, and seemingly "led on by the impetus of his own reasoning,"¹⁸ he declared that regardless

15 Clark, G. A., "Conservation of Fur Seals," 1917 *North American Review* 640, 1913.

16 I. Moore's Digest, 95.

17 *Ibid.*, p. 96. This was on August 19, 1887; the proposal was made to France, Great Britain, Germany, Japan, Russia, Sweden-Norway.

18 Henderson, *op. cit.*, p. 24.

of territorial sovereignty over the sea the right of the islands' owner to run the business wherever the seals might lead had been acquiesced in for ninety years, so that it was *contra bonos mores* for Canada to step in now.¹⁹ Lord Salisbury disagreed. Beasts *ferae naturae* were *res nullius*—that is, first come, first served.²⁰ So the United States fell back, with more conviction than consistency, upon the old Russian territorial claim to the Bering Sea itself: we asserted that the claim had never been contested north of 60°, and the British denied it.

Finally an arbitration was agreed to, and pending its outcome the British promised to stay out of the sea until the following May (1892), we to do likewise except for a catch of 7500 seals for native use.²¹ Other articles of this *modus vivendi* permitted either party to seize and hand over violators of the other's nationality, and permitted Great Britain to send an investigator to the islands to collect evidence.

While this was going on, the first lease had expired and a new one was granted for twenty years to the North American Commercial Company²² (1890) upon rather similar terms; the government royalty, however, was to be \$10.22½ per skin, instead of \$3.17½ as before.²³

The arbitration treaty was signed on February 29, 1892, and the arbitrators duly sat at Paris and considered the evidence.²⁴ Five questions were submitted to them by article 6 of the treaty: (1) Did Russia have exclusive rights in the sea and the seal fisheries? (2) How far were such rights recognized by Great

¹⁹ I Moore's Digest, p. 898 ff.

²⁰ *Ibid.*, p. 900.

²¹ June 15, 1891; Moore, p. 904.

²² House of Representatives # 6129, p. 5; Evermann, *op. cit.*, p. 265.

²³ Henderson, *op. cit.*, p. 12. The Alaska Company at \$55,000 rent per annum had cleared about \$6,000,000 in the 20 years of its lease.

²⁴ Moore, pp. 905-910. The arbitrators: J. M. Harlan, J. T. Morgan, Lord Hannen, Sir J. Thompson, Baron de Courcel, Marquis Visconti Venosta, Gregers Gram.

Britain? (3) Was Bering Sea included in the Convention of 1825 with Great Britain? (4) Which of Russia's rights passed unimpaired to the United States?²⁵ (5) Had the United States any right in the seals beyond the three mile limit? If the arbitrators found that British concurrence was necessary to American regulation, the seventh article of the treaty empowered them to draw up regulations with the aid of a joint commission.

The factual evidence was confusing. The respective experts²⁶ split neatly along national lines, the Americans urging the abolition of pelagic sealing as death to the herd, the British conceding some falling off of numbers but blaming it on American land killing. The legal evidence was easier. The American case failed to win a favorable reply on the first three questions and the fourth therefore became meaningless; counsel had indeed to fight against the whole weight of modern doctrine that the sea is no one's property, so that Russia never had any rights in it and could convey none, and to defend the notion of prescriptive rights acquired in the fisheries despite a paucity of authority.²⁷ Nor was the effort to establish a right in the seals themselves any more successful, notwithstanding the ingenious argument that the seals were a sort of domestic animal since they leave the islands *animo revertendi*; Henderson points out that if this were good law, Canada could assert an exclusive property right in the migratory birds which winter in the United States but breed in Canada.²⁸

So the "Paris Award" of August 15, 1893 answered the questions as follows:²⁹ (1) no, (2) not at all, (3) yes, (4) all

²⁵ See Article I of the treaty of cession, quoted in Henderson, p. 3.

²⁶ C. H. Merriam & Prof. Mendenhall for the U. S., Sir G. Baden-Powell & Dr. G. M. Dawson for Great Britain. Counsel were E. J. Phelps, J. C. Carter, H. W. Blodgett, F. R. Coudert (US) & Sir C. Russell, Sir R. Webster, C. Robinson (GB). Moore, p. 907, Henderson, p. 33.

²⁷ Henderson, *op. cit.*, p. 37.

²⁸ *Ibid.*, p. 39.

²⁹ Moore, *op. cit.*, pp. 910-921.

(i. e., nothing), (5) no. The Americans dissented. It was then necessary to draw up regulations, to be effective for five years, which were briefly as follows: (1) a sixty mile zone around the islands was closed to pelagic sealing, (2) no pelagic sealing was to take place between May 1 and July 31st north of 35°N. and east of 180° and the 1867 boundary, (3) only sailing vessels might take part in the business, (4) they must be licensed, (5) keep detailed records, (6) and use no nets, firearms (except shotguns), or explosives, outside Bering Sea, (7) and must employ qualified men. Sealing in the primitive manner by Indians and Eskimos was exempted. Since these rules applied only on the high seas, the arbitrators recommended that the powers make like rules for their own territories, as well as imposing a year's closed season if possible, and of course passing enabling legislation. The regulations were accordingly made law by the United States and by the British, but there was no closed season.

Soon after this British claims for wrongful seizures were settled by a joint commission at Victoria, and Russian claims at the Hague by arbitration. American claims dragged on for a long time, and our claimants felt especially aggrieved because all the while that they were liable to arrest in Bering Sea by the Coast Guard the Customs officers at San Francisco were passing the pelagic catch without question, having no orders to the contrary. In the light of the decision in *The Ninfa*³⁰ that Americans had as good a right to the pelagic game as anyone before 1894, Congress belatedly (1922) authorized the District Court for Northern California to hear and determine claims, and the ex-fishers were duly compensated.³¹

The inadequacy of the new regulations was almost instantly shown. The commissioners had their facts wrong, for even breeding seals go more than sixty miles to sea, and the zone was quite insufficient for their protection even on the impossible as-

30 49 Fed. 575 (District Court, Alaska, Oct. 1, 1891).

31 House of Representatives, 784, Committee on Judiciary, 67th Cong., 2nd Sess., March 9, 1922.

sumption that its boundary could be observed with any accuracy in that fog-bound world. The closed season was also much too short, and the parallel between the still dwindling herd and the still growing pelagic fleet could scarcely be an accident. Even such as they were, the rules were poorly enforced; the British put the burden of producing evidence on the complainant, though the United States did not, once possession of the goods was shown, and sent only one patrol boat to our twelve, although Canada's fishermen outnumbered ours two to one.³²

The decade of the nineties shows a gradual governmental exasperation. An act of 1897, which finally killed American pelagic sealing, put burdensome conditions on the import of other people's skins; it was further proposed to brand all cows in such a way as to spoil their skins, and even to spite the British by wiping out the entire herd—a bill to this end actually passing the House of Representatives.³³ But the British stood stubbornly on their right to a five year tryout as the regulations provided, perhaps partly because Congress took so long to appropriate the sum of \$425,000 for which the State Department had agreed to settle in compensation of Canadian damages.³⁴

Meantime the question was complicated even further by the spread of the pelagic business to the waters about the Russian and Japanese islands, where similar complaints began to be heard and where Great Britain in 1895 signed regulatory agreements similar to that affecting the Pribilofs, but with an even narrower zone of only thirty miles.³⁵

In November 1897 revision was at last due by the regulations' own terms, but even the now unanimous findings of experts, supporting in every particular the American claims and finding the annual yield cut to a quarter of what it once had been, with

32 Summarized from Henderson, *op. cit.*, p. 42 ff. His figure of 142,000 for the pelagic catch in the first year under the regulations is, however, impossibly high.

33 Henderson, *op. cit.*, pp. 51-54.

34 Moore, *op. cit.*, pp. 921-922. The act finally passed in 1897.

35 *Ibid.*, p. 923; Evermann, *op. cit.*, p. 268.

disproportionate numbers of females and young being slain every year, did not put an end to stalling.³⁶ The season of 1898 passed with the Canadians bound by no regulations whatever; a new meeting of experts in August achieved nothing, not even an agreement for a new meeting of experts; the Canadians rejected a proposal to buy out their whole fleet and refused any further concessions unless we granted commercial reciprocity; and finally all negotiations blew up over the Alaska boundary dispute.

The Russian attitude was never very clear. They claimed to be on our side, accepted with Japan our proposal for a four power conference in 1897—which was never held because Great Britain was against it—yet paid indemnity without protest when the British demanded it on the ground of wrongful seizures at sea.³⁷ It was beginning to look as though the herd was beyond saving, and that the United States must stand by and watch while the Canadians collected the last profits and finished the job.

The actual figures tell their own story.³⁸ The land catch of

SEALS TAKEN BY LAND AND SEA, 1870-1911 (in thousands)

| | 1870 | 71 | 72 | 73 | 74 | 75 | 76 | 77 | 78 | 79 | |
|------------|------|-----|-----|-----|-----|-----|-----|-----|-----|-----|------|
| Land | 6 | 95 | 100 | 100 | 100 | 100 | 100 | 75 | 100 | 100 | |
| Sea | 7 | 17 | 5 | 5 | 6 | 5 | 6 | 5 | 6 | 9 | |
| | 1880 | 81 | 82 | 83 | 84 | 85 | 86 | 87 | 88 | 89 | |
| Land | 100 | 100 | 100 | 75 | 100 | 100 | 100 | 100 | 100 | 100 | |
| Sea | 9 | 10 | 16 | 16 | 17 | 23 | 28 | 31 | 26 | 30 | |
| | 1890 | 91 | 92 | 93 | 94 | 95 | 96 | 97 | 98 | 99 | 1900 |
| Land | 21 | 13 | 8 | 7 | 16 | 15 | 30 | 21 | 18 | 17 | 22 |
| Sea | 41 | 60 | 47 | 31 | 62 | 56 | 44 | 24 | 29 | 34 | 35 |
| | 1901 | 02 | 03 | 04 | 05 | 06 | 07 | 08 | 09 | 10 | 11 |
| Land | 23 | 22 | 19 | 13 | 14 | 14 | 15 | 15 | 15 | 14 | 12 |
| Sea | 24 | 23 | 27 | 29 | 25 | 21 | 16 | 18 | 14 | 12 | 13 |

³⁶ Henderson, *op. cit.*, p. 55 ff.

³⁷ Moore, *op. cit.*, p. 923 ff.

³⁸ #6129, *supra*, p. 114 and graph opposite p. 132.

the North American Company was strictly regulated and never much exceeded twenty per cent of the older quota, thirty thousand being the record take; yet even so the figure seldom passes twenty thousand after the turn of the century and is indeed in the way of rather steady decline. Pelagic sealing rose rapidly after 1880, reaching a high point of 62,000 in 1894, *not counting* animals which were not recovered on account of sinking; after this date the sea catch like the land one begins to fall at a rather steady rate. This decline was certainly not due to regulation and still less to loss of appetite on the part of the hunters, but must be ascribed to depletion of the seal population. Figures on the breeding cows bear this out completely; the 600,000 on the islands at the time the United States began counting them dropped in thirty years to 150,000; in 1909 only an estimated 45,000 remained, and in the next year, when the government formally took over from the lessee, only 43,000 in a total herd of 131,000.³⁹

Meanwhile, not only did the traditional pelagic problem continue, but the Japanese became a serious new threat after the close of the Russian war. In no way affected by the Paris agreement, since they were never parties to it, the little yellow men went to work with a will. Not content with invading the territorial sea, they became bold enough in 1906 to land armed on St. Paul's and there to raid the rookeries with impunity, killing male and female without discrimination, and, according to our agent's report, in a needlessly cruel manner.⁴⁰ On July 17th an American guard, tiring of this, shot and killed two such poachers who refused to surrender when hailed.

Strangely, no protest by Japan seems to have followed this unusual act. The official attitude of that government is very puzzling; it not only made no effort to stop the lawless acts of its nationals but encouraged the business by a bounty until

39 Lembkey, W. I., Report for 1910, in # 6113 *supra*, p. 1011.

40 Report for 1907, # 6113, p. 386.

1909,⁴¹ though it had a rookery of its own after 1905, and yet never complained of our attitude toward the sealers, backed our proposal for a conference in 1897, and readily adhered to the convention of 1911.⁴² In the next two years, the same sort of raiding was repeated, by a fleet that came to number about thirty-eight vessels, apparently acting in concert; the American guards could do little but complain of inadequate cooperation by the Coast Guard, which indignantly denied the charge.⁴³ So successful and systematic were the Japanese that their destructive trade had practically driven the Canadians out of business by 1909.⁴⁴

Plainly the time was more than ripe for international action as the only possible cure; but while that remedy eluded the seekers, efforts were made to do at least something. An advisory board appointed in 1909 recommended⁴⁵ that the government and not the lessee make the rules regarding land killing, that the government's agent have discretion to stop killing regardless of the lease, that killing be limited to seals of a certain age and size, and that a naturalist be appointed. On the strength of this report, the government took action and in some respects went beyond it; the North American lease was not renewed, and government itself took over in the interest of consolidated administration, buying up the ex-lessee's fixings for \$21,339.32 and selling the skins in the London market for its own account to defray the cost of maintaining the islands. The duties of administration were transferred from a special agent to the Bureau of Fisheries and a resident naturalist was appointed to study the economics of sealdom and the ravages of disease, de-

41 Report for 1909, # 6113, p. 851, and Stejneger, L., *Bureau of Fisheries Bulletin* for 1925, p. 302.

42 *Ibid.* and Agent's report for 1908, # 6113, pp. 605, 735.

43 Report for 1907, # 6113, p. 405 ff.

44 Report for 1909, # 6113, p. 851. The Japanese even found use for the unborn pups when they could get them.

45 # 6113, pp. 813-814, Nov. 24, 1909.

spite the rather natural protests of Agent W. I. Lembkey that this scientific supervision was unnecessary and that sealing which was essentially a cattle business did not belong under a fish commission.⁴⁶

Why after so many years of intransigence the British attitude suddenly changed is not to be found from the official records. It may have been due to the declining value of the pelagic catch, and especially to the encroachment of the Japanese on the dwindling profits thereof; or the cause may have been political, and connected with that sudden search for friends and allies and the settlement of old issues which marked the policy of London after the South African War. Certain it is that issues apparently beyond solution in 1900 were under negotiation by 1905⁴⁷ and though the first proposals were dropped they were soon reasserted on a four power basis by Secretary Adee. In 1911 came the treaties which remained the basis of the industry down to the present day.

A preliminary agreement was signed on February 7th by Great Britain and the United States alone, in order that some regulation might be in effect if the larger treaty failed; but since it was closely followed by the Convention of July 7th which came into force on December 14th and whose fifteenth article expressly superseded it, we shall not analyze it here⁴⁸ for it contains no distinctive matter not covered by the more general instrument.⁴⁹

The Convention strikes at once at the central evil, and in its first article expressly prohibits pelagic sealing (defined in Article 9) in the Pacific and its enclosed seas north of 30°, the extreme limit of the animals' range, and vests power of arrest and detention in each party with respect to the ships of all, though the accused must be tried in his own court. The powers then close

46 Report for 1910, # 6113, p. 1011 ff.

47 See Hornaday, W. T., *Thirty Years War for Wild Life*, p. 174 ff.

48 U. S. T. 563 (1911), 3 Malloy, 2629.

49 U. S. T. S. 564 (1911), 3 Malloy 2966.

their ports and territories to any use connected with the prohibited practice (Article 2), and forbid the importation of any skin unless officially marked and certified as taken on the breeding grounds (Article 3). Notice that this makes it impossible for even a non-signatory to sell skins taken at sea through the British and American markets, which are the only large ones.

Article 4 preserves the inevitable right of natives to take in their own manner and for their own use. This has worked out in an odd way; it appears that most of the natives, having already learned to use guns, were too proud to go back to spears and many of them had forgotten the older art, so they have become fishermen instead of sealers.⁵⁰ Then the pursuit of sea otters beyond the three mile line in the protected zone is forbidden (Article 5), the parties undertake to enact effective laws and penalties (Article 6), those who own breeding grounds agree to maintain a patrol in the waters frequented by their respective herds (Article 7), and all are to cooperate in the taking of appropriate and available measures (Article 8).

All this is a typical case of the now familiar game law treaty: certain areas are closed to certain practices and trade in the forbidden thing is prohibited. Articles 10 through 14 attempt to establish a fair division of the proceeds from lawful killing.⁵¹ The United States is to deliver (Article 10) annually fifteen per cent of the take to the Canadian and to the Japanese governments, either in money or in skins, and to make to each an advance payment of \$200,000 to be credited against money or goods coming due later (Article 11). The minimum annual payment is set at 1000 skins, unless the government sees fit to suspend killing altogether for the sake of the herd, when a money payment of \$10,000 is to be made instead. Killing and payment must both stop if the herd falls below 100,000 animals. This payment is not a measure of damages for failure to produce

⁵⁰ Bureau of Fisheries report for 1913 (Doc. 782), p. 12.

⁵¹ Evermann, *op. cit.*, p. 263; his estimate of the approximate number of the respective herds in 1911: U. S. 127,745, Russia somewhere between 18,000 and 30,000, Japan 6557.

the skins, for the United States is entitled to reimburse itself at four per cent when killing is resumed, by retention of skins otherwise then due; this is important in view of events which followed.⁵²

By articles 12 and 13, Russia undertakes a like obligation to deliver fifteen per cent to Canada and to Japan, the total kill to be five per cent of the herd or eighty-five per cent of the three year olds, whichever is less, and all killing to stop if the herd drops below 18,000.

Japan's turn comes with Article 13, but the distribution is divided between Canada, Russia, and the United States at ten per cent each; the total kill is again to be five or eighty-five per cent as in Russia's case, and the minimum herd to be 6500. By Article 14 Great Britain must make a like ten per cent distribution to the other three parties when and if seals begin breeding on British soil. This hasn't happened.

Articles 15 to 17 are formal; the treaty runs for fifteen years and then indefinitely, subject to withdrawal on twelve months' notice in the fifteenth year or thereafter, and further conferences are to be held if it is deemed desirable. Ratifying action was prompt and the convention became law. Many have doubtless felt, and Evermann⁵³ expresses the feeling, that it has too few signers, for there are many nations with merchant fleets or Pacific coasts or both which are not on the convention, and there has always been the possibility that some of them would resort to pelagic sealing despite the deterrent of Article 3, (which would make marketing difficult), as well as the danger that the North Sea experience would be repeated and the signers themselves evade the law by registering their vessels under foreign flags. But the history of international legislation has so often

⁵² President's message, Senate Document 997, # 6364, 62nd Cong., 3rd Sess., Jan. 8, 1913, p. 6. The point is to prevent cessation of killing and consequent international disputes at the whim of the Commerce Department; the introduction of a payment provision means that Congress must take action if such cessation is desired.

⁵³ Evermann, *op. cit.*, p. 279.

shown that if the parties are too many or the field too wide, less than ever is accomplished. The signers of 1911 showed their sense of this reality by providing only against present dangers and leaving the future for future action. In practice, the dreaded evil has never appeared, perhaps because of Article 3, perhaps because of the provisions for sharing the annual haul. It is notable that the British enabling act ⁵⁴ goes beyond the convention, closing ports of the United Kingdom to pelagic sealers, just as Canada closes hers, and providing that an order in council may extend the ban on imports to any part of the Empire except a dominion.

The introduction in Congress of a bill to enforce the convention was the signal for another battle of experts; for the question was raised whether land killing should not be suspended for a period, to give the herd a chance to recover. A certain H. W. Elliott who was formerly in the government service and was reputed to be an expert on seals revived the long forgotten Canadian claim that this even more than killing at sea was the real cause of the herd's decline; and though the great weight of responsible evidence was the other way, and though the local administration particularly wanted to keep up the land killing to see whether the abolition of the other kind was a total solution, ⁵⁵ the Senate Foreign Relations Committee was sufficiently impressed to recommend a ten year closed season clause in the proposed act. ⁵⁶

This brought an anxious message from Taft himself, for political questions as well as conservation were at stake. The initial obligation of \$200,000 to Great Britain and to Japan was

54 2 and 3 George V, 273.

55 House of Representatives report 295, # 6129, 62nd Cong., 2nd Sess., Feb. 3, 1912. Among those opposing the suspension were F. A. Lucas of the American Museum of Natural History, C. H. Townsend of the New York Aquarium, G. W. Bowers of the Fish Commission, H. F. Osborn, and Madison Grant.

56 Report Committee on Foreign Relations, # 6121, 62nd Cong., 2nd Sess., March 22, 1912.

pointed out, and the Congress reminded that for twenty-five years we had been telling the world that land killing was legitimate and pelagic sealing the sole evil, that our fellow signers had reluctantly yielded and surrendered their right to the latter for the sake of a share in the proceeds of the former, and that our failure to deliver on the line would jeopardize the future of the whole deal.⁵⁷ The President recalled that under government supervision, with the elimination of the leasing system, there was no danger of the herd being annihilated for profit's sweet sake, and urged that there be no suspension at least till shown necessary. He continued:

It would be most unfortunate if we should lose the opportunity, which is now presented for the first time by virtue of this convention, of demonstrating by the test of actual experience the soundness of the position maintained by us throughout the controversy, and upon the soundness of which depends the permanent solution of this question in the manner provided for in this convention.⁵⁸

This plea had some effect but not enough; Congress compromised on a minimum closed season for five years and refused to go further, despite the groans of the seal men.⁵⁹ The Bureau of Fisheries gloomily observed that the closed season violated the spirit of the treaty if indeed it did not actually repudiate our obligations,⁶⁰ and added that far from being necessary to the herd's welfare, this ban actually prejudiced it. It permitted an accumulation of idle bulls, and thus greatly increased the friction over females, who frequently get squashed, together with their young, in the course of their suitors' jousting.⁶¹

57 President's message, # 6179, 62nd Cong., 2nd Sess., Aug. 14, 1912.

58 *Ibid.*, p. 3.

59 37 Stat. 499, sec. 11.

60 Jordan and Clark, "The Truth about the Fur Seals," Bureau of Fisheries *Economic Circular No. 4*, Dec. 20, 1912.

61 *Ibid.* See also Clark, G. A., "Conservation of Fur Seals, 197 *North American Review* 640, 643, May, 1913.

Meantime the government was losing about \$1,200,000 in the five year period on account of animals untaken which would have outgrown their value when killing was resumed, while the fox herd on the islands, itself a valuable though minor source of revenue, was threatened with starvation for want of the killing-ground refuse on which it normally lived.⁶² Fortunately these predictions of disaster were not to be wholly fulfilled; but evidence suggests that the herd did in some respects deteriorate while increasing in numbers.⁶³ The money loss may have amount to as much as \$450,000 each to Great Britain and Japan, and over three million to the United States.

Sure enough, the other governments objected to what seemed our needlessly greedy attitude, and in the following year the President again begged, almost with his dying official gasp, that the act be revised, but in vain.⁶⁴ Since the pelagic catch had been worth about \$4,500,000 in fifteen years, and since Japan had to pay its sealers \$560,000 to go unwillingly out of business, it is no wonder that these people were resentful.⁶⁵

Other complaints aplenty beset the administration in these early years of the convention. Evermann accuses the Department of Commerce of suppressing the report of a commission sent to study the working of the act when it found that the five year closed season was a mistake, and blames it for abolishing the post of naturalist promptly after the change of administration in 1913. In this same fit of economy four other trained and experienced men lost their jobs and were not replaced, which must indeed have affected the efficiency of the local establishment, and is said to have contributed to the decline in morale and

⁶² *Ibid.*

⁶³ Evermann, *op. cit.*, pp. 281-282.

⁶⁴ Senate Document 997, President's Message on Fur Seals, #6364, 62nd Cong., 3rd Sess., Jan. 8, 1913.

⁶⁵ Evermann, *op. cit.*, p. 282.

living standards among the islanders, already virtually unemployed because of the act.⁶⁶

Even more serious if true would be the charges of fraud in the administration of the islands. Mr. Elliott,⁶⁷ accused the North American Company of having obtained its lease in an improper manner, and of wanton butchery for its own profit; meanwhile, he charged, David Starr Jordan and others had falsified the facts and misled the public.⁶⁸ The Committee on Expenditures in the Commerce Department before whom these extremely sweeping charges were made apparently believed them, but to this writer at least they look ridiculous on their face and certainly all evidence since that date is against them.⁶⁹ The committee's findings drove Secretary Redfield to send a three man commission to the islands in the summer of 1914, which reported to the contrary effect and in some respects specifically contradicted Elliott's claims.⁷⁰ The attorney-general tactfully buried the mess.⁷¹

Despite all these woes the convention turned out a complete success regarding its major object, which was to save the fur seal. In the year ending August, 1912, the agents found not a single starving pup in all the islands, where in 1896 at least 16,000 had so perished.⁷² The steady growth of the American herd from that date on is unmistakably shown by the following table based upon official sources:

66 Clark, G. A., "The Problem of the Pribilof Islands," 41 *Scientific Monthly N. S.*, 902, 903, June 18, 1915.

67 See p. 128.

68 House of Representatives 500, Committee on Expenditures, 4/4/14, # 6766, 63rd Cong., 2nd Sess., April 4, 1914.

69 See *ibid.*, minority report, p. 4; accusing Elliott of inconsistencies and pointing out that he lost his government job and was recognized by no zoologist of standing.

70 See hearings on bill to amend the Seal Act, Senate Committee on Commerce, 69th Cong., 1st Sess., June 10, 1926, p. 16.

71 *Ibid.* This action occurred May 12, 1915.

72 Agent's report, 1912 (Document 780, Bureau of Fisheries), p. 96.

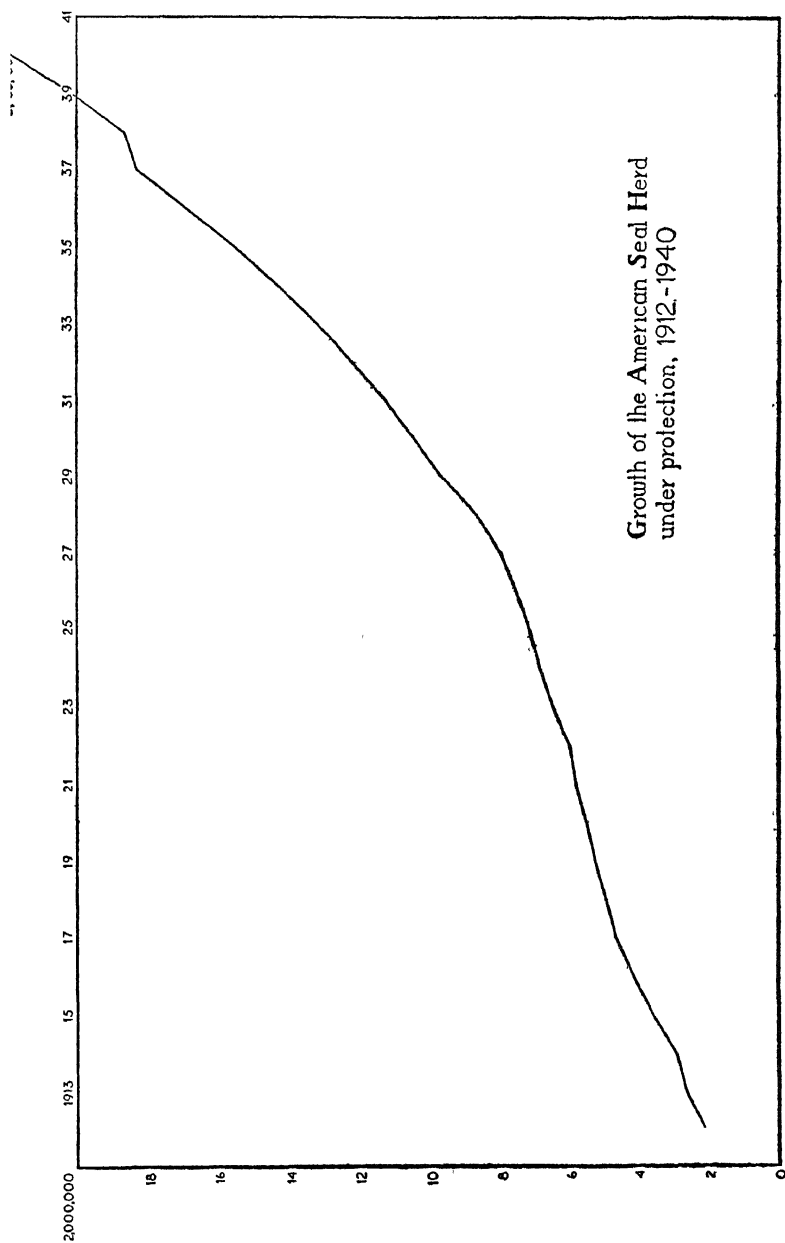
| Year | Herd | Taken | Year | Herd | Taken |
|--------------|---------|--------|--------------|-----------|--------|
| 1912 | 215,940 | 3,764 | 1927 | 808,870 | 24,942 |
| 1913 | 268,305 | 2,296 | 1928 | 871,513 | 31,099 |
| 1914 | 294,687 | 1,896 | 1929 | 971,527 | 40,068 |
| 1915 | 363,872 | 3,947 | 1930 | 1,045,101 | 42,500 |
| 1916 | 417,281 | 6,466 | 1931 | 1,127,082 | 49,524 |
| 1917 | 468,692 | 8,169 | 1932 | 1,219,961 | 49,336 |
| 1918 | 496,611 | 33,881 | 1933 | 1,318,568 | 54,550 |
| 1919 | 524,260 | 25,381 | 1934 | 1,430,418 | 53,468 |
| 1920 | 552,718 | 35,000 | 1935 | 1,550,913 | 57,296 |
| 1921 | 581,443 | 30,260 | 1936 | 1,689,743 | 52,446 |
| 1922 | 604,962 | 31,156 | 1937 | 1,839,119 | 55,180 |
| 1923 | 653,008 | 15,920 | 1938 | 1,872,438 | 58,364 |
| 1924 | 697,158 | 17,219 | 1939 | 2,020,774 | 60,473 |
| 1925 | 723,050 | 19,860 | 1940 | 2,185,136 | 65,263 |
| 1926 | 761,281 | 22,131 | | | |

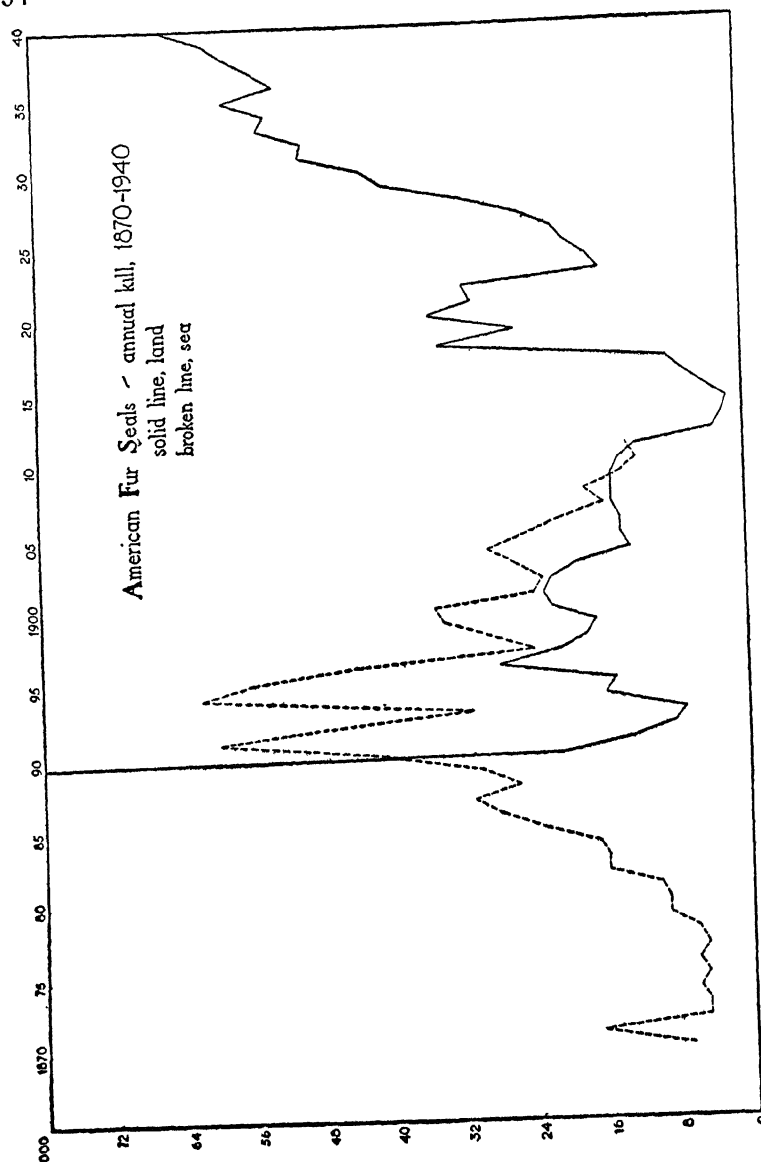
(Source: Annual Reports, Bureau of Fisheries, 1913 to 1940. The first open season was 1918; animals taken in the previous years were used locally, especially for food.)

It is impossible to get figures on the exact size of the Russian or the Japanese herd. Some rather vague information received by the Bureau of Fisheries in 1918⁷³ indicated that the Russian herd then numbered 50,000 at most and the Japanese something over 11,000, a rate of growth more or less proportional to that on the Pribilofs in the same period. It would be hazardous, however, to assume that a similar growth had since continued at least on the Commanders. The islands are much larger than ours (Bering being about fifty miles by ten, Copper about thirty by two) and even more rugged, so that policing is difficult. The owner's attitude, moreover, has always smacked of the lackadaisical; pelagic raiding before 1911 by the Japanese is said to have been four times as bad as in the American zone,⁷⁴ while the far-off government regularly accepted without question the wild guesses of the local overseers as to the number of the animals and took an interest only in keeping the annual kill up to 9,000. As a result the slaughter was indiscriminate and cows

⁷³ Report for 1919, p. 105.

⁷⁴ Stejneger, L., "Fur Seal Industry in the Commander Islands, 1897-1922," 41 *Bulletin, Bureau of Fisheries*, p. 301 ff.





were being taken even on the land. Stejneger's report of 1925 is not reassuring.⁷⁵ What little control the Imperial government once exerted disappeared completely with the outbreak of the war, and the Bolshevik revolution apparently utterly demoralized the whole administration. Japanese and native poaching has therefore flourished; natives of the Kuriles in flagrant abuse of their treaty privileges are also said to raid the herd unmercifully on its northward journey, when the animals are more concentrated than they ever become on the American side of the sea, and a herd once probably half the size of ours is now no more than a tenth of its size. Seals are replaced by grass on many beaches and the outlook is poor.⁷⁶

The Japanese who are so free with other peoples' seals seem at least to have treated their own with respect. The small deliveries to us under the convention, which are generally under one hundred and only reached two hundred in 1935, indicate a close restriction on Robben.⁷⁷ I have been unable to learn any further details of their practice.

The convention has never been revised, though the original fifteen year term expired in 1926, and some particulars might well have been reexamined at that time. Evermann has urged⁷⁸ the abolition of native rights as obsolete and subject to abuse, and also the adherence of other nations, but no government has taken any action. Probably the best course is to let well enough alone, for the preservation and increase of the herd are amply assured by the present instrument, the government is making over a million a year out of it, and there are no serious loopholes that ought to be stopped. But it is earnestly to be hoped that

⁷⁵ *Ibid.*, p. 293 ff.

⁷⁶ U. S. Fish and Wild Life Service Bulletin, "Protection of Fur Seals," February, 1941, estimates Russia's herd at 100,000, Japan's at 50,000.

⁷⁷ See Bureau of Fisheries reports, 1913 ff.

⁷⁸ "The Conservation of the Mammals and Other Vanishing Animals of the Pacific," 14 *Scientific Monthly* 261, March, 1922. He also calls attention to the plight of other animals still unprotected, such as the giant tortoise, sea elephant, California sea lion, walrus, etc.

Japan's denunciation of the Convention on October 23, 1940 does not portend the beginning of the end.⁷⁹ That government claims, probably wrongly, that the herd has increased to the point of interference with the fisheries, upon which of course Japan depends, though avowing its willingness to enter into a new arrangement. Perhaps this will eventually be done; but one who has read the recent history of Russo-Japanese relations knows that "fisheries" to the Japanese mind has acquired a sort of secondary flavor of meaning—it indicates that political questions in general could do with some consideration. And all men know that our political relations with Japan are not running as smoothly as statesmen might desire.

If the Japanese actually and permanently leave the fold, we must expect the worst, if past performance is a guide to the Japanese attitude on conservation. The whales, soon to be discussed, are an example. Must the islands be once more bereaved of their inhabitants, as a tribute to our century's lust for anarchy? It is too soon to know.

A NOTE ON OTHER SEALS

The Antarctic also had a fur seal once (*Arctocephalus australis*), of which a few specimens remain. It formerly abounded on the Falklands, and Forster expected (1775) that the herd on South Georgia would be left undisturbed for many years,⁸⁰ yet by 1800 a record catch of 57,000 was taken, and in another twenty-five years commercial sealing was no longer practicable. Today a limited number are taken under a British licensing system which is said to work well enough.⁸¹

There has been a sort of concurrent national—one cannot call it international—protection of the European hair seals in

⁷⁹ *New York Times*, October 24, 1940. The year of grace elapsed without further negotiation.

⁸⁰ Murphy, R. C., "Status of Sealing in the Subantarctic Atlantic," *Scientific Monthly*, 112, August, 1918.

⁸¹ *L. N. O. J.*, 1929, annex 1157, p. 1593.

recent years, although the fishermen claim that the animals do more harm than good.⁸² It is impossible to set up breeding sanctuaries since the creatures perform this function on ice instead of land, and regulations therefore take the form of a closed season only. In 1874 Norway asked for cooperation in this field with respect to the seals of Jan Mayen Land, and with Great Britain, Germany, the Netherlands and Russia responding, common legislation was adopted to fix the opening date for killing at April 3 between 67° and 75° N. and between 5° E. and 17° W.⁸³

The Soviet Union has its own ideas on protection, and in 1921 closed the White Sea, and the whole Arctic coast within twelve miles of land, to sealers. Norway protested, and by an agreement of 1924 was again permitted to hunt in those waters, outside the line Orlof-Kanusjin, between April 1 and June 15th,⁸⁴ to a total catch of 4,000 tons unless experts should find this excessive. In fact the catch ran only about 700 tons in the first decade.

2. CAN THE WHALES BE SAVED?

Both seals and whales spend much time in swimming and it is customary to treat the problems of their conservation as essentially similar. Actually Lembkey was right in calling the fur seal industry a cattle business rather than a fishery, for the seal breeds on land, and it is on land that the killing is now carried on; the seal islands are a true ranch. But the pelagic sealing of unhappy memory may properly be called a fishery; it is this hunter's method which resembles that of the whaleman, and both threaten the existence of marine wild life with analogous

82 See comment, 173 *Law Times* 212, Mar. 9, 1932, in respect of British legislation to protect the grey seal. In this case the protectors carried the day, Mr. Macquisten expressing a desire "to do no injury to any sort of seal, including the Lord Privy Seal."

83 See Daggett, A. P., "Regulation of Maritime Fisheries by Treaty," 28 *A. J. I. L.* 693, 1934.

84 *L. N. O. J.*, *supra*, p. 1593 ff.

dangers. We have just seen that the pelagic sealer found it hard and in his short view profitless to distinguish nicely the age and sex of his intended victim; how much more is this true of those who seek the whale, an animal which can only be hunted at sea! For the modern whaler's equipment is highly specialized and costly, the enterprise cannot succeed unless the haul is great, and the strenuous labor which it demands must usually be performed in far and friendless waters that offer small temptation to anyone to linger beyond the least time necessary to complete a pay load. Time lost in fine and fussy distinctions is something the hardy whaler wants to avoid.

The impenetrable nature of the whale's domain, for these great beasts never do come to land, makes it extremely hard even for specialists to study their life story and determine the limits of safe capture, and without this antecedent knowledge one is in danger, like Mark Twain's mushroom eater, of learning—too late—by experience. It is only in very recent years that fair knowledge has replaced fantastic superstition regarding the whale's length of life,¹ its rate of growth and conditions of reproduction, while despite centuries of whaling history even approximate figures on the total number of whales and exact data concerning their wanderings—important as bearing on the question whether disappearance from a given area means emigration or extinction—either remain absent, or are matter for furious dispute.

Whales are of three families, but only the two whose imposing scions have been the subject of large scale exploitation have given rise to serious conservation questions. The Sperm whale (*Physeter catodon*) was most eagerly hunted in the great days of New Bedford for the rare quality of its oil and particularly for the reservoir of spermaceti that it carries in its abundant snout; but the species has been so thoroughly hunted down that commercial capture no longer pays. The survivors live mostly in the still waters of tropic and near tropic zones where the

¹ Conklin's *Argument Settler*, Chicago, 1905, gives the whale a thousand years.

possession of teeth downstairs and a full-sized throat permits them to eat a ton of octopus a day for a surprisingly short life of eight or nine years.²

Modern whaling is mostly limited to the "baleen whales," with screens of whalebone where their teeth ought to be and throats too small to engulf anything bigger than shrimps. The right whales (*Balaena mysticetus* and *Eubalaena* sp.) were the first of all to be hunted and the first to go; the "Nordkaper" is still occasionally taken in British waters³ but to no great degree. Bulky, smooth-throated and lacking a dorsal fin, these may exceed fifty feet in length. The humpback (*Megaptera novae-angliae*) is of similar size and has long white flippers and a wrinkled throat. The three finners are long, strong, and racy in build; of these the blue whale (*Sibbaldus musculus*), sometimes over eighty feet long, is not only the biggest but the biggest animal ever known to exist; the common finback (*Balaenoptera physalus*) is but little smaller and travels faster, at better than fourteen knots; the family runt is the sei whale (*B. borealis*), which rarely exceeds fifty feet.⁴

Unlike the toothed whales, all these prefer the colder waters of the ocean, their greatest concentration occurring along the Arctic and Antarctic borders.⁵ Full growth is reached in six or eight years, in the blue not till about the tenth year, but breeding begins at about two years of age, the cow bearing a calf fifteen to twenty feet long then and about biennially thereafter. An average lifetime is twenty years; a thirty year old whale is very old indeed.⁶

2 Kellogg, R., "Whales, Giants of the Sea," *National Geographic Magazine*, January, 1940, p. 57; "Zoologica," New York Zoological Society, April 3, 1935.

3 Jenkins, J. T., *A History of the Whale Fisheries*, London, 1921, p. 16.

4 *Ibid.*, pp. 16-19; Kellogg, *op. cit.*, p. 57 ff. The name *sei*, which is Norwegian for pollack, refers to the whale's habit of following these fish.

5 Townsend, C. H., in "Zoologica," *supra*, April 3, 1935.

6 John, D. D., *National Humane Review*, July, 1938, p. 20. This and the following are based on the report of the Discovery expeditions, in which the author cited took part.

Breeding normally occurs in the low sun months when the whales retire to warmer waters; with the return of spring they proceed to higher latitudes to fatten up. Food supply determines these migrations. In spring the warming surface waters of the polar seas set up convection currents with the underlying cold mass,⁷ which by freshening and oxygenating the whole create optimum conditions for the growth of plankton; minute plants (diatoms) multiply and are food for tiny shrimplike creatures (euphausians and copepods) which become in turn the picturesquely disproportionate food of whalebone whales. As the season wanes, so does the supply, and the whales retire again.⁸ For some reason yet unknown the seasonal variation is greater in the north than in the south, where plankton is always relatively abundant;⁹ this fact combined with the greater extent of the waters makes the Antarctic a naturally perfect place for whales, and the remoteness of that sea from human habitation long kept it a secure refuge.

Whale migrations seem to vary considerably according to species.¹⁰ The northern right, or Greenland whale—rarely found in the Atlantic now—oscillates only between the western Arctic and the Kuriles; the humpbacks pursue fairly regular pendulum-like courses along the prevailing ocean currents between the Antarctic and the line; the blue avoids the tropics, and retiring southward at the earliest possible date beats all others to the feeding grounds; while the finback's apparently erratic movements have us all baffled so far.

⁷ This is an oversimple statement of a rather complicated physiographic phenomenon; see "The Voyages of the Discovery," 140 *Nature* 529, Sep. 25, 1937, at p. 531, and Reports of the Discovery Expedition itself (*Report on the Progress of the Discovery Committee's Investigations*, Cambridge, 1937).

⁸ Kellogg, *op. cit.*, p. 38, and same author, 1928 Smithsonian Report, p. 469.

⁹ John, D. D., "Address on Whaling," 31 *Fauna Journal* 15, 19, 1937.

¹⁰ Kellogg, *Smithsonian Report*, 1928, p. 467 ff.

The history of whaling, so well told by Jenkins,¹¹ will be dismissed here with a respectful summary. Inshore hunting on a pretty haphazard basis began among the Basques of the Biscay coast in the thirteenth century; by 1530 these seamen had followed the quarry as far as Newfoundland, and a hundred years later the Dutch had superseded them and were successfully competing with the English in the rich waters of Spitzbergen.¹² Unlike the contemporary herring fishery the English whaling business seems to have gone unregulated in the seventeenth century; only in 1724 did the British government, following the Dutch and French example, charter and subsidize a whaling company in standard mercantilist fashion. An act of 1733 provided a bounty figured not on the catch but on the tonnage engaged, and this was extended in 1776. A small but regular fishery was thus nurtured, first in the European, then, as the supply failed, in the American Arctic. There seems to have been no attempt to go south till the end of the 1700's and the old industry never really flourished there; with the outbreak of the long wars in 1792 Europe's whaling all but ended, and Hull and Dundee together could put but thirty boats in the field by 1868.¹³

The great period of American whaling began just about the time that Europe's ended. The field became world wide in a few years and the rate of exploitation greatly increased. In 1829 we had 203 ships at sea,¹⁴ in 1834 421, and in the years 1835-1860 an annual average of over 600, to bring in oil and bone of an annual value exceeding eight million dollars. A seventy-million-dollar industry employed seventy thousand hands, about forty per cent being based on New Bedford, with Nantucket, New

11 Jenkins, *op. cit.*, p. 25 ff.

12 According to Raestad, *La Chasse à la Baleine en Mer Libre*, Paris, 1928, p. 18, it was the Dutch monopoly of land bases that compelled others to develop the method of trying out on board, even though early ships often burned up in the process.

13 Jenkins, *op. cit.*, p. 256.

14 *Ibid.*, p. 229.

London, and Sag Harbor following. But when the rocks were tapped for oil, the bottom fell out of the older business. In 1866 only 263 ships put to sea, in 1876 169, in 1886 124, in 1896 77, and in 1906 but 42, and these last were all from the Pacific ports—the Atlantic business had vanished entirely. By 1893 the west coast fleet was two-thirds under steam, and the old romance was over.

But a whole new epic begins with the adoption of the bomb gun invented by Sven Foyn back in 1860, which fires a 150-pound harpoon-missile effective at a mile, and the use of fast pursuit steamers instead of open longboats powered by human muscle. Today the whale is sought and taken by large well-decked whale catchers, generally oil-driven, which can overhaul the quarry at any distance. It became possible to run down the swift rorquals (finners), immune before because they neither submitted quietly to their fate like the poor old Greenland whale nor after an initial "sleigh-ride" died thrashing on the surface like the sperm, but on feeling the barb rushed off in fury, or plunged to the bottom dragging the whalers after them, or even if slain in time, yet sank like rocks and could not be recovered.¹⁵ The new boats could overtake these monsters and the new gun generally killed them outright, while a steam pump procedure made it possible to inflate the carcass so that it would not sink.

The old mother ship, on whose wooden decks the tryworks smoked and smelled, was modernized. It has become a floating factory of ten to twenty thousand tons,¹⁶ with a slip like a ferry-boat's end astern, on which the whale is bodily hauled. Winches hoist him up on this flensing plane, and winches aid in relieving him of the blubber that used to be sliced off by hand; then the meat is stripped from the bones and the carcass generally dismembered. Blubber is given three boilings in open vats to yield nearly its own weight in oil; the total is increased by cooking still more out of the rest of the whale under steam pressure.

15 Raestad, A., *Chasse à la Baleine en Mer Libre* (1928), p. 21 ff.

16 Jessup, P. C., *Exploitation des Richesses de la Mer*, Paris, 1929, p. 89.

Whalers expect to get ten barrels from a sei whale, up to seventy from the larger rorquals, and even more from the sperm.¹⁷

The best grades of oil are used in making soap and other glycerine products, the rest is lubricants. Spermaceti still finds a limited market for the manufacture of fine machine oils. The whalebone, formerly so valuable, is apt to be junked but is used somewhat in threads for stiffening fabrics. The dried residue, looking but not tasting like coffee, becomes feed or manure.¹⁸ The Japanese and some others eat whale meat, but this is not a general practice, though we understand that the flesh is really not bad.¹⁹

By the nineties the North was pretty well fished out²⁰ and the surviving whalers were beset with legislation,²¹ passed not by animal lovers, but by fish catchers who claimed the whalers ruined their business. So the Norsemen under C. A. Larsen braved the dark Antarctic, so long the whale's sure sanctuary, and despite the failure of the first expedition in 1892, proved by a second that with proper tools the business was practicable (1894). Four men of Dundee went to the Falklands in the same year as the first Norsemen, but British whalers as a whole showed no interest, and let Norway capture the field.²² The appearance of the whalers in southern waters drew the attention of the Argentine government, and in 1904 the *Compania Argentina de Pesca* was formed; the charter was Argentine but the whalers continued to be Norwegian. At this point the Bri-

17 The procedure is described in many sources; this is taken from Jenkins, *op. cit.*, p. 42 ff. Whalers figure the haul in "blue whale units" on the following scale: 1 blue = 2 fin = 2½ humpbacks = 6 seis.

18 Jessup, *op. cit.*, p. 88 ff.; and other sources.

19 A & P, 1920 (Cd. 657), Report Interdepartmental Committee Appendix 10, interview with C. A. Larsen and T. Sørle. (An attempt to make sausage skins from the creature's intestines was, however, a failure.)

20 Jenkins, *op. cit.*, p. 264.

21 *Ibid.*, p. 272 ff. and A. & P., 1904 (Cd. 2138) report of committee on whaling, etc. in the North of Scotland, pp. 6-7.

22 A. & P. (Cd. 657), Appendix 5, "The Whaling Industry of the Dependencies of the Falkland Islands," p. 47 ff.

tish woke up; in granting the company shore rights by lease at South Georgia, they imposed certain regulations, and in 1908 the government created and asserted sovereignty of the Falkland dependency, just as the Ross dependency was to be created with the shift of business thither, in 1923.²³

Now the real show began. The shore station at South Georgia began operations in 1906 and another was soon started at Deception Island, the only good harbor in the South Shetlands.²⁴ In the season ending 1913, two floating factories and twenty-one catchers based on the first point, twelve and thirty-two on the second, took 400,000 barrels of oil, all the law then allowed;²⁵ with the lifting of the bars under world war demands the total number of catchers rose to fifty-eight and the catch to 560,000 barrels. Where in 1905 the northern fishery yielded 2510 whales to the southern 100, in 1910 the relation had shifted and the north dropped to 1500 against 4000 or more in the south.²⁶ One hundred and fifty thousand barrels a year had been a big catch for New Bedford, twice that was now less than average—and the governments began to worry. Yet this was only a beginning!

TOTAL ANTARCTIC CATCH, AND OIL IN THOUSANDS OF BARRELS, 1910-1918
(Cd. 657, Annex, p. 64)

| | | 1910 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 |
|----------------|-------------|------|------|------|------|------|------|------|------|------|
| South Georgia | { Whales .. | 3516 | 6529 | 6535 | 4850 | 3349 | 5097 | 7361 | 4471 | 3199 |
| | { Oil | 104 | 189 | 212 | 213 | 176 | 270 | 346 | 268 | 203 |
| South Shetland | { Whales .. | | | 4813 | 5044 | 5259 | 4133 | 4431 | 2003 | 1114 |
| | { Oil | | | 149 | 198 | 222 | 207 | 213 | 93 | 56 |

TOTAL WORLD CATCH, IN THOUSANDS OF BARRELS OF OIL, 1906-1917
(Cd. 657, Annex, p. 68)

| | 1906 | 07 | 08 | 09 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 |
|---------------------|------|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|---------|
| Total | 75 | 125 | 150 | 240 | 320 | 625 | 780 | 800 | 750 | 630 | 634 | 358 (?) |
| Norway's share | 51 | 65 | 69 | 129 | 188 | 360 | 520 | 630 | 570 | 460 | 389 | 258 |

²³ Raestad, *op. cit.*, p. 52.

²⁴ A. & P., 1920 (Cd. 508.1), Falklands Annual Report, 1918, p. 7 ff.

²⁵ Cd. 657, p. 5 ff.

²⁶ Jenkins, *op. cit.*, p. 284.

The territorial authorities made an effort to control the whalers by regulations limiting the catch, requiring something like full use of the carcass, and protecting mothers and young,²⁷ but these were at all times inadequate in content and enforcement, and broke down when oils and all other fat products rose to their war time premium.²⁸ Only the diversion of whaling ships to other uses in the last two years of war gave the poor beasts a little breathing spell.

The result may be easily guessed. Where the clumsy Greenlander held out at Spitzbergen against old-fashioned methods for two centuries, the humpback, a much more agile species, was disappearing from the Falkland dependency in little over a decade, and the finner and blue were showing a decline in numbers.²⁹ So critical did this become after the war, that the industry was presently transferred almost bodily to Ross Sea, where it still centers and is conducted on a strictly pelagic basis.³⁰

Against this butchery the conservationists protested. It was the prime factor behind Sarasin's call in 1913 for an international conference on nature protection,³¹ to which governments paid a little—not too much—attention. Immediately after the war, Great Britain appointed an interdepartmental committee which deliberated and reported in 1920.³² Some anxiety was apparently felt about the humpback (see note 29) but in all other

²⁷ *Ibid.*, p. 278.

²⁸ Cd. 508.1.

²⁹ Jenkins, *op. cit.*, pp. 51 and 297; numbers in hundreds of the various species 1911-1918 taken in the Falkland Dependency.

| | | | | | | | | |
|----------------|----|----|----|----|----|----|----|----|
| blue | 8 | 12 | 22 | 24 | 42 | 48 | 38 | 22 |
| finner | 2 | 23 | 48 | 32 | 39 | 51 | 22 | 17 |
| humpback | 61 | 79 | 34 | 15 | 14 | 18 | 4 | 1 |

³⁰ See "Captain Ahab in Modern Dress," *Fortune*, October, 1932, p. 52 ff.

³¹ *Recueil des Procès-verbaux de la Conférence Internationale pour la Protection de la Nature*, Bern, 1913, p. 27; Sarasin proposed to divide the sea among the nations.

³² A & P, 1920. Cd. 657, *supra*.

respects its findings are disappointingly inconclusive, its attitude complacent, and positive recommendations absent, except to continue the existing licensing system and find more facts.

Our almost total ignorance of the whale's habits and life history certainly did stand in the way of intelligent regulation down to 1920, national or international. To remedy this gap, the Colonial Office in 1923 purchased the *Discovery*, of Robert Scott's 1901 expedition, a stout little wooden ship of 700 tons, to be employed in research upon the distribution of whales, their numbers, rate of reproduction, and so on. She proved to be a bad roller³³ and was disposed of after a single voyage; but a new *Discovery* was built and fully equipped, and attended by a smaller vessel, the *William Scoresby*, engaged in more than twelve years of exploration and study. As a result much light has been thrown upon the whale's obscure career. On the continent, the Permanent Council for Exploration of the Sea, a multinational body internationally financed and with a permanent bureau at Copenhagen, created back in 1902,³⁴ took up the study of whaling for the first time and laid the foundations of later findings by the League of Nations.

The question was not a simple one, as the interdepartmental committee had already found. The business represents an impressive capital investment, and can hardly be expropriated outright; moreover it is well armed in its own defense. Professional whalers who took the stand before the committee generally argued that the danger of extermination was much exaggerated; hear the words of C. A. Larsen himself:

I do not believe it is possible so to deplete the stock of the so-called fin whales so that posterity may be without them . . .

I am absolutely of the opinion that no danger threatens, as the

³³ "The Voyages of the *Discovery*," 140 *Nature* 529, Sept. 25, 1937 and Reports of the *Discovery Expedition*.

³⁴ Jessup, *op. cit.*, p. 28; see also the Council's *Rapports et Procès-Verbaux des Réunions*.

humpback has his undisturbed haunts in the ocean; we have many proofs that he is a migratory animal going from ocean to ocean.³⁵

Does this not sound alarmingly like the "mysterious factory" fallacy that kept gunners and governments alike so long in a fool's paradise with respect to migratory birds? The first report by the League brought officialdom too to the whaler's defense.³⁶ Arnold Raestad, formerly Norwegian foreign minister, minces no words; he charges the industry's critics with "conscious wrongs and malice aforethought" and extols the whaler who "extending the field of human activities by fruitful initiative deserves the honors commonly set apart for pioneers rather than to be overwhelmed with calumnies."³⁷ He accepts the fallacy of inexterminability and thinks it impossible to catch all the whales in the Antarctic; unless a certain number are caught, he says, you lose money, and business deserts an area when the decline begins.

Unfortunately for this view, retirement invariably occurs too late; in the words of Jenkins: "in no case has the cessation of whaling taken place sufficiently soon to render possible the recovery of the whales to any appreciable extent."³⁸ Johan Hjort, a brilliant student of oceanic problems and himself a Norwegian, has recently shown³⁹ that whereas in many ordinary fisheries a cycle of production can be traced, its fluctuations predicted, and the optimum catch per year estimated, no such cycle can be found in respect of whales, but on the contrary, the effect of continuous fishing is uniform and disastrous.

Whaling in a new field everywhere has a marked and rapid increase up to a maximum and a subsequent sudden collapse.

35 Cd. 657, Appendixes 11 and 12, pp. 94 and 95.

36 Raestad, *La Chasse a la Baleine en Mer. Libre*, 1928.

37 *Ibid.*, p. 16 (my translation).

38 Jenkins, *op. cit.*, p. 47.

29 Hjort, J., *The Human Value of Biology*, Boston, 1938, pp. 184-185.

Statistical studies everywhere demonstrate the dangerous decline in the average catch of the individual catcher, and the important service rendered by these studies has therefore been that of hoisting at the earliest possible moment the danger signal of the imminence of decline.⁴⁰

The signal is unhappily not universally regarded. How can Mr. Raestad explain away this testimony by one of his own experts?

The beginnings of international protection came nevertheless with the twenties, the same decade of reconstruction which, to look only at our specialized field, flowered finally in the African convention and saw the successive attempts to amend the Bird Convention of 1902. Of all reforms in the field the whale question alone was treated by League action. Why? Because there never was a movement within the League which sought the protection of animals as such, nor was any unit of the League's structure specifically charged with handling items of this nature. The birds, as we have seen already, were brought to the attention of the organization rather late in the League's day; the affair was primarily an interest of private, not official international associations, and its failure to achieve a solution was certainly in part due to the absence of active support by either an international or a major national government. The protection of African game was pushed through by the interest of the British government, which had far the largest stake in the question, and which notoriously prefers to act along the old informal lines in matters of international legislation rather than through the Geneva machinery, which is so typically continental and so un-British in conception.

With the whale the case was different, for his protection was an incident of the most international of all questions,—the rule of the sea. We need not fight over again the ancient argument of *mare liberum*; it is no longer seriously disputed that the sea beyond some undetermined line is nobody's *res*, and Sarasin's

⁴⁰ *Ibid.*, p. 185 and see graph, p. 186 of the same.

proposal⁴¹ for partition of the ocean is unlikely to win much lawyer's support. Indeed the last public appearance of the contrary doctrine was probably our own ill-fated attempt to revive the Russian claims to part of the North Pacific. But the question of national *rights* in this non-national domain is still cruelly alive. The problems of maritime law are indeed among our most vexing, in peace only less than in war; and when the League proceeded to an inquiry for which it was most definitely designed, the progressive codification of international law, the fisheries in general, among which is included the whaling industry, could hardly escape consideration as part of the greater question.⁴²

A committee of jurists, asked of the Council by the Assembly on the motion of Switzerland,⁴³ was duly created, and J. L. Suarez, an Argentine, appropriately named as its rapporteur. His "Report on the Exploitation of the Products of the Sea" was presented on January 29, 1926;⁴⁴ his effort, he says, was to seek a *biological* approach, with primary attention to the preservation of economically valuable species, rather than the traditional *diplomatic* one, wherein the parties are thinking chiefly of reciprocal commercial rights and only incidentally of conservation. Here we have a departure, then, in the direction exemplified by the conventions examined above, but rarely found elsewhere in international law, perhaps because of the

41 *Recueil des procès-verbaux de la Conférence Internationale pour la Protection de la Nature*, Bern, 1913, p. 32 ff. The whole controversy is told in detail in such works as Fulton, *Sovereignty of the Sea* and Jessup, *The Law of Territorial Waters*.

42 G. G. Wilson and Sir J. F. Williams, in *Les Fondements Juridiques de la Conservation de les Richesses de la Mer*, Brussels, 1936, suggest that we should speak of servitudes rather than property rights in the sea (p. 36) though there is no servient tenant, and elsewhere suggest that the sea is an animal *ferae naturae* which is never caught. Raestad, *op. cit.*, p. 62, advances the extraordinary argument that since no state has individual rights in the sea, they cannot act jointly.

43 Sept. 22, 1924. See Raestad, *op. cit.*, p. 5.

44 C. 196 M 70 1927 VI, p. 120 ff. Date of report, Dec. 8, 1925.

lawyer's tendency to think in terms of "rights of the parties" rather than of substantive subject matter to be treated in the common interest.⁴⁵

The rapporteur sees the situation as urgent, and begins by proposing international regulation of the whole continental shelf to a depth of two hundred meters, in the interest of the fish supply. Coming to the matter of whales, he rightly says that the problem is international, now that the business is overwhelmingly pelagic and beyond any territorial control on the spot, but believes that all can be solved if international control is imposed. By adequate regulation, economic exploitation can be secured; this would be to the general advantage and should be determined as to substance by a conference of scientific, industrial, and juristic experts. As general remedies he recommends

- (1) the demarcation of zones to be exploited in rotation—a sort of "three-field system,"
- (2) an annual closed season,
- (3) complete protection of the young,
- (4) standardization of methods of capture,
- (5) the fullest possible use of all animals taken.

In accordance with the regular procedure, the report and recommendations were circulated to most of the world's governments, of which twenty-eight replied.⁴⁶ Twenty-one, or just three-quarters, favored international action with varying degrees of reserve, several pointing to the virtue of more expert advice before plunging ahead, and four were against it. These

⁴⁵ Out of more than twenty international agreements relating to the fisheries (not counting the periodic Russo-Japanese ones) less than half a dozen are significantly conservational. See the appendix to Suarez report, pp. 125-6.

⁴⁶ Replies, Annex to Suarez Report, p. 127 ff. Favorable: Austria, Belgium, Brazil, Bulgaria, Cuba, Czechoslovakia, Denmark, Estonia, Finland, France, Greece, India, Italy, Poland, Portugal, Rumania, Spain, Sweden, United States, Venezuela, Yugoslavia. The Netherlands reply is equivocal. See Analysis by Barbosa, appendix, *supra*, p. 279.

significantly were Great Britain, Germany, Japan, and Norway, or every important whaling state except the United States, which was favorable, and Argentina which apparently sent no reply! The British characteristically held out for local bilateral agreements, and so did the Japanese. The Norwegian reply, insisting on the importance of very careful inquiry first, is an obvious stall.⁴⁷ Germany and the Netherlands proposed that the matter be passed to the League Economic Committee with instructions to cooperate with the Copenhagen council, and this was the middle course actually adopted; the whole thing simply went underground for two years, a course made easy, however, by the report itself. The original Codification Committee

- (1) recommended that a mixed experts committee be created as Suarez proposed to work along the above lines and in cooperation as the replies asked because the replies indicated the need for more study, and
- (2) hopefully suggested that a whaling convention emerge.⁴⁸

And so it was done; other fishery questions were dropped outright.

The new expert body was advised

- (1) to establish general and local basic rules for the organization of a more rational and uniform system of supervising the exploitation of maritime fauna in all its aspects;
- (2) to reserve zones and organize a system of alternating exploitation; to fix closed seasons or to fix age limits under which the various species may not be caught or hunted;

⁴⁷ Raestad in the work cited, p. 15 ff., condemns the report for assuming too hastily both the decline in whales and that it was caused by the new methods, and also for not going into the long history of bilateral treaties, —but it is hard to see their relevance.

⁴⁸ C. 199 M 73 1927 V. April 20, 1927, Codification Committee report to Council.

- (3) to determine the most effective method of establishing and maintaining supervision over the application of the measures adopted;
- (4) to determine the most suitable form of total or partial international regulation of the subject, and draw up if necessary a general draft convention or series of multilateral draft conventions.

This was late in 1927; the action had been recommended in April.⁴⁹ Two more years passed while experts committee, economic committee, and Copenhagen council investigated, to report back in the summer of 1929.

It is but fair to say that the Norwegians were willing to cooperate, up to a point, by independent national action.⁵⁰ More specifically, they were ready to close the tropic seas, to protect the rarest species and the young and mothers of all, to require full use, and to compensate whalers at least in part according to the total volume of oil and not the total number of animals. So much was enacted by statute and regulation in 1929,⁵¹ and became the basis of the Geneva convention itself. The Norse were seemingly unwilling to establish a closed season, or a minimum age as distinct from size limit, to make a deal with the British and Japanese for fear of adverse effects on their own business, or to abolish any type of equipment then in use; it was feared for example that the abolition of floating factories might put Norway back at the mercy of a territorial sovereign, and this they did not like,—but with the industry operating almost wholly in Ross Sea, where there are no land bases there was never any question of this.

⁴⁹ *Ibid.*, see also A. 18 1927 V, A. 105 1927 V and A. 133 1927 V for Assembly action and resolution adopted Sept. 29, 1927 instructing Economic Committee to cooperate.

⁵⁰ See Raestad, *op. cit.*, p. 59 for the Norwegian position.

⁵¹ Statute quoted in part in Jessup, *op. cit.*, pp. 100-1, adopted June 21, 1929, regulations promulgated Aug. 2, 1929, summarized in *Fauna Journal* 49, 1930.

The fruits of international investigation were reported to the Council at last.⁵² International action was recommended only in respect of whaling but there the matter was thought to be of some urgency, for while it was not really a question of total extermination, the end of commercial exploitation was already in sight, considering the great scope afforded by modern weapons. This alarming conclusion was based partly on Copenhagen Council findings⁵³ which concluded that the Antarctic whales were threatened with extinction, even the British Falkland regulations being inapplicable to pelagic hunting, and the range of whale migration so great that regulation would probably have to be universal. The economic committee in presenting these findings, as the organ in general charge of the problem, made no recommendations of its own except that a new committee of experts be appointed to consider substantive proposals; and the appointment of yet another mixed committee therefore followed. It sat at Berlin, and in April of 1930 finally gave birth to the long awaited draft convention.

The proposed Act resembled the Norwegian law of 1929, but in some ways did not even go quite so far. The experts for example did not venture anything so specific as the wholesale closing of the tropic sea,⁵⁴ and in no respect did they go beyond the national law; so that Norway, with complete preservation of face, could adhere to the international arrangement she had formerly contemned, since it turned out to be no more than declaratory of her existing law. The draft applied to all the oceans of the world, territorial and otherwise; it was limited to baleen whales, gave special protection to the rarest species, mothers, and young, required that a carcass be fully used and compensation computed on other than a number-taken basis.

⁵² *League of Nations Official Journal*, 1929, annex 1157, Aug. 31, 1929.

⁵³ *L. N. O. J.* 1929 Annex 1157, *supra*, especially p. 1594 ff., and see Copenhagen Council, *Rapports et Procès-Verbaux des Réunions*, vol. 49, 1928.

⁵⁴ See comment by Jessup, "The International Protection of Whales," 24 *American Journal of International Law* 751, 1930.

In addition, ships were to be duly chartered and licensed, and international cooperation was invited.⁵⁵ The convention was not to take effect until Norway, which did about half the business, and Great Britain, which did about half the remainder,⁵⁶ should both adhere.

Once again we must go the rounds, from the experts to the codification committee, thence to the Council, to the member states for suggestions and back to another special committee under Braadland of Norway, which submitted it with only minor changes for final acceptance on September 19, 1931.⁵⁷ Opened for signature on the twenty-fourth, just about seven years after the League first took up the question, the Convention proper was signed by twenty-six states of which seventeen ratified.⁵⁸

The convention applies in all the world, but only to baleen whales (Article 2), exempts natives who behave as natives (Article 3), and absolutely prohibits the killing of right whales of whatever species (Article 4) as well as calves in general and their accompanying mothers (Article 5). Article 6, in exacting the fullest possible use, specifically requires that head, tongue, and tail be utilized and that stations be fully equipped for such purpose whether they be permanent factories or simply works erected to handle whales brought ashore. Ships must be fully licensed (Article 8), and the crew's share must depend on size, species, value, yield, and so on, and not solely on the number of whales taken. (Article 7).

Articles 10 to 12 recognize the inadequate state of human knowledge. Governments agree to find out all they can about

55 A. 64 1931 II B. Report and draft resolution by second Commission to Assembly.

56 *Ibid.*, and see comment in 20 *Fauna Journal* 54, 1933.

57 See convention in U. S. T. S. 880, 4 Malloy 5573.

58 *Ibid.* Signers: Albania (1), Germany, United States of America, Belgium, Great Britain, Canada, Australia, New Zealand, South Africa, India, Colombia, Denmark, Spain, Finland, France, Greece, Italy, Mexico, Norway, Netherlands, Poland, Rumania, Switzerland, Czechoslovakia, Turkey, Yugoslavia.

the whales taken, such as date, place, species, sex, size, condition of fetus if any, and stomach contents if possible (Article 10), to get returns from the factories on the number of whales treated and the amount of product obtained (Article 11), and to supply all this information, annually at least, together with the number, names and sizes of their factories, catchers, and shore stations to the International Bureau for Whaling Statistics at Oslo (Article 12).

Under articles 13 and 20, a signatory is permitted to exempt overseas possessions, and the convention is then not to apply in respect of territorial waters round about. This has been done by the Netherlands in respect to its American possessions, but not by anyone for any place where any large number of whales are to be found. Other articles are formal; 17 requires that eight states must ratify, including Norway and Great Britain. A notable omission is the reciprocal power of arrest found in the fur seal and North Sea treaties.⁵⁹

Three months after the British ratification on October 18, 1934, the convention went into effect, approximately ten years after the wheels began to turn.⁶⁰ The delay in action by the British is said to have been caused by the "pressure of essential legislation in Parliament."⁶¹ It is notable that a number of states not party to the original convention have adhered to it, Switzerland doing so to show its interest in wild life and international law although it had no economic interest.⁶²

59 See comment by Wilson & Williams, *op cit.*, p. 24. It seems that no state so far has conferred upon another the power to *convict* or *punish* its nationals.

60 Before this date the following had ratified: United States of America July 7, 1932, Norway July 18, 1932, South Africa January 11, 1933, Switzerland, Feb. 16, 33, Mexico March 13, 1933, Netherlands May 30, 1933, Italy June 12, 1933, Spain Aug. 2, 1933, Poland Sept. 27, 1933, Czechoslovakia Oct. 20, 1933, Nicaragua adhered April 30, 1932, Sudan April 13, 1932, Monaco June 17, 1932, Brazil Nov. 21, 1932, Egypt Jan. 25, 1933, Letter of R. Kellogg, Dec. 14, 1935, in ACIWLP file.

61 Vallance, W. R., "The International Convention for the Regulation of Whaling," 31 *American Journal of International Law* 112, 114, 1937.

62 *Ibid.*

The principal whaling states dutifully followed up the convention with enabling legislation. Norway, which already had a tolerably adequate statute in the law of 1929, added only a few provisions; ⁶³ the crown was authorized to close areas and seasons (Article 4) and to issue orders concerning capture and use (Article 5), and turning over Norwegian ships to other registry without permission of the Commerce Department was forbidden (Article 11) in a clear attempt to forestall trouble of the Moray Firth type. The British act soon followed; ⁶⁴ it forbade whaling in British waters under penalty of £100 and three months, and enacted the convention requirements with many detailed provisions as to licensing. Nothing in the law, however, paralleled the Norse gesture of self-denial in imposing a closed season on themselves (under 5 and 6 of the law) from March to December south of 50° and requiring that no factory take more than it could handle, and there was some grumbling about this. ⁶⁵

Though the United States was prompt to ratify, actual legislation lagged; a bill passed the Senate at the end of the 1933 session (August 24) after much organized pressure and many hearings, and the House of Representatives in the following year. ⁶⁶ The Bureau of Fisheries seemingly took little interest ⁶⁷ and the act's sponsors vested enforcement in the Coast Guard and Customs (Article 9) to be assisted by the navy if necessary. The act as passed includes prohibitions and limitations like those elsewhere (Articles 2-4), minimum lengths to be sixty feet for the blue whale, fifty for the finback, and thirty-five for the

⁶³ Act of June 26, 1934; quoted in Hearings, 74th Cong., 1st Sess., on United States bill, 1935.

⁶⁴ 24 and 25 Geo. V, Ch. 49, July 31, 1934—i. e. before the formal ratification.

⁶⁵ Memorandum in ACIWLP file, quoting *Norwegian Whaling Gazette*, date uncertain.

⁶⁶ Hearings, House Foreign Affairs Committee, 74th Cong., 1st Sess., Feb. 11-March 10, 1936.

⁶⁷ Letter P. Norbeck to J. Phillips, Aug. 15, 1935, ACIWLP file.

humpback; it then proceeds to require licenses (Article 8) and full use (Article 6). The Department of Commerce is to issue licenses; originally the Treasury was to have sole enforcement power but the house amended the bill to give joint power as in the Fur Seal law, and the Commerce and Treasury departments jointly are to make regulations and collect data (Article 5).⁶⁸ The British Act had created a whale fishery inspector, with power to board and inspect; the American law says only, a treasury employee, but the effect is the same.⁶⁹ Penalties are much heavier than in England,—\$10,000 and six months.⁷⁰ The regulations were duly issued in October, 1936.⁷¹ Our debt to the Migratory Bird Law is evident on the face of the act, and was acknowledged by its makers.⁷²

But all this was not enough. In the first year under the convention more whales were taken than ever before. Over thirty thousand were captured by all nations in the Antarctic alone, notwithstanding the new laws and the grim evidence cited by Laurie⁷³ that the average length of the blue whale had dropped in five years from eighty-two to seventy-nine feet and was approaching the minimum limit for bearing young. Exactly as with the first stumbling effort to protect the fur seal herd, thirty-five years earlier, the regulators had set their standards much too low, and the need of further steps was obvious. A cynical mind might suggest that Norwegian concurrence in the law so soon after Mr. Raestad's indignant blast at the League was based on knowledge that the proposed rules would not slow

⁶⁸ *Ibid.*

⁶⁹ Vallance, *op. cit.*, 116.

⁷⁰ Originally forfeiture of the vessel was provided for, but this was distasteful to the Committee; Hearings, *supra*, p. 107.

⁷¹ 49 Stat. 1246.

⁷² Letter to J. Phillips from P. Norbeck, Aug. 15, 1935, ACIWLP file.

⁷³ Letter to *Nature*, July 14, 1936, see 31 *Fauna Journal* 15.

down production, and might remind us that there were some proposed items to which Norway would *not* consent.⁷⁴

Further steps did follow. Already, in the season ending 1933 Norway's whalers, compelled by falling prices, had voluntarily entered production agreements for that year which limited the capture,⁷⁵ and in 1935, a shorter season had been imposed by law south of 50°, as we have seen, though the British and others were not bound by it. For the season of 1937, Britain and Norway agreed with each other to limit the number of boats per expedition according to the expedition's size and to operate only between December 8 and March 7 in waters south of 40°, the latitude of New Zealand and Patagonia. And in the spring of 1937, the major whaling nations, with the unhappy exception of Japan, accepted a British invitation to London for a new conference. Even Norway could now see that the stock was declining and the English, who had always wanted a small informal agreement, had scored after all.

The Whaling Agreement, to be distinguished from the Geneva Convention, was duly signed on the eighth of June.⁷⁶ It applies to all waters, all kinds of whales, and all types of enterprise (Article 2). Each government undertakes to maintain an inspector aboard each factory ship (Article 1), and to institute prosecutions when necessary. (Article 3). The Geneva provisions about right whales are included, and the rare gray whales added (Article 4); the length limits embodied only in national laws before are specifically inserted and revised upward to seventy feet for the blue whale, fifty-five for the fin, and thirty-

74 See Hearings, House of Representatives Committee on Merchant Marine and Fisheries, 23d Cong., 2d Sess., Jan. 31, 1934, p. 34; H. R. Carpenter of Seattle favored a whaling treaty because it would impose no new duties on the whalers. So mixed are society's motives that while binding itself to protect whales, our government was also considering a subsidy for the whaling industry; such was the primary subject of the cited hearings.

75 Leonard, L. L., "International Protection of Whales," 35 *American Journal of International Law*, 90 ff., 1941.

76 USTS 933, pp. 102-3.

five for the humpback and sperm (Article 5); and the ban on calves and mothers is reenacted (Article 6).

Now we come to something entirely new,—the closing of certain waters and certain seasons. No factory or attendant catcher may hunt baleen whales south of 40° except from December 8 to March 7 (or for 1938, March 15), and the tentative arrangement of the previous season⁷⁷ has become law (Article 7). The open season, however, coincides precisely with the time that the whales are there to be hunted. By Article 8, no land station or its catchers may be used more than six months in a year and these must be continuous. By Article 9, pelagic whaling is barred at all times in the Atlantic or Indian Oceans north of 40° S. and in the Pacific east of 150° W. between 35° and 40° S. and west of that meridian between 20° and 40° S. That is a lot of water, and the rule seems primarily designed to protect the humpback and sperm whales on their subtropical breeding grounds; it leaves intact the significant shore fisheries of the Faroes and Northern Norway, and the coasts of the four British dominions, while Japan is not even present to bind itself. Any whale of legal size proceeds at his peril in North Pacific or Arctic seas, and the Atlantic-Arctic boundary is not defined. Article 10 makes the usual scientists' exception.

Articles 11 to 17 deal with the manner of carrying on the business and largely repeat the Geneva Convention. Full use is to be made of whales (11), no more to be taken than can be handled within thirty-six hours (12), crews to be paid on a non-per-whale basis (13), *and* an accounting of wages must be made by the company to its government, to aid enforcement (14). By Article 15, any new matter in Articles 5, 9, 13, and 14 is not to bind persons planning to operate up to December 1, 1937, but to bind all thereafter. As in the Convention, records are to be kept of the catch and of its disposition (Article 16), and information to be sent to the Oslo Bureau (Article 17). The rest is formal (Articles 18 to 22). Duration is for a year

⁷⁷ See p. 158.

and thereafter if extended (as it was). Argentina, Australia, Germany, Great Britain, Ireland, New Zealand, Norway, South Africa, and the United States signed, and Mexico adhered to the agreement.⁷⁸

The signatories plainly feared that they had hardly done a job even so. By the final act of the agreement,⁷⁹ the governments are cautioned lest the restrictions on pelagic hunting cause a boom in land stations despite the natural handicaps to which these are subject, and are urged to consider the possibility of further limitation still, such as a maximum number of catchers per station or factory, a longer closed season, or a year to year sanctuary in some part of the Antarctic or elsewhere. They are urged to take action against killing methods which result in needless cruelty and loss, and against foreign registry in evasion of the agreement.

This recital of matters unresolved makes very clear the imperfect state of regulation—even clear to the regulators themselves—though the agreement is certainly an advance upon the convention. Even that which was accomplished, however, signally failed to check the longshore business, and the closed season clauses were soon shown to be ineffectual. Whereas in 1921 12,174 whales were taken in all the world, the number rose in a decade to 42,874 with the full conquest of the Antarctic; the next few years show a drop because of the depression, but in the season ending 1936—under the Convention—came a record haul of 44,782, in 1937, one of 51,256, and in 1938—under the Agreement—of 54,664, of which 46,039 were taken in the Antarctic alone.⁸⁰

The British proposed a new conference on May 20, 1938, and it met at London on June 14, with the former parties present

⁷⁸ On February 8, 1938. Germany, Great Britain, Ireland, New Zealand, Norway, and the United States ratified.

⁷⁹ Final Act, 1937 Agreement (USTS 933).

⁸⁰ These and other figures from International Whaling Statistics, Oslo, for the relevant years. See chart and graph hereto appended.

and in addition Canada, Denmark, France, and Japan.⁸¹ The representatives considered a resolution of the Copenhagen Council (May 28, 1938) which viewed with alarm the steady decline in blue whales⁸² and expressed the opinion that only a limit on the total amount of oil would save the species, and in the light of this and the generally grave condition revealed by statistics, weighed some seven proposals with varying results.⁸³

It was determined not to shorten the open season, lest the business be threatened with outright ruin and driven to violate the clause requiring full use, in a spirit of cut out and get out. It was also determined not to limit the number of catchers per station because no agreement could be reached among the parties.⁸⁴ It was also determined not to put a ceiling on the total Antarctic output nor to fix maximum quotas per expedition because arbitrary limitations would penalize the efficient, and anyhow no agreement could be reached. A little was done to protect the humpback, whose rapid approach to extinction was becoming too plain for further rationalization;⁸⁵ a special committee recommended a year or more of absolute closure, but since some land stations and a few other plants seemingly depend on these creatures, a weak compromise was all that could be obtained, Articles 5 and 7 being modified to forbid using factories or their catchers on humpbacks south of 40° S. between October 1, 1938 and September 30, 1939.

It was then agreed by amendment to Article 7⁸⁶ to set up a sanctuary, for two years at least, in the western Antarctic

81 Final Act, 1938 Conference, London.

82 From a maximum of 30,495 in 1931 the catch had dropped to 18,108 in 1936 and 14,635 in 1937 though the total number of all species had increased. IWS, *seriatim*.

83 Final Act 1938.

84 Britain and Norway were apparently favorable; Leonard, *op. cit.*, p. 104.

85 Article I of Protocol. After 1933 the catch jumped suddenly from a few hundred a year to a high of 9797 in 1937, then fell suddenly to 5049 in 1938.

86 Protocol, Article 2.

(south of 40° between 70° and 160°) for all baleen whales. This sector, which extends from about Cape Horn up to *but not including* Ross Sea was chosen on the basis of the Discovery report that whales frequent it "though commercial whaling has not hitherto been prosecuted."⁸⁷ The first part of Article 9 was amended to close the whole Arctic to whalers except the region bounded 150° E., 72° N., and 140° W., this area just northwest of Bering Strait being left open to please the Japanese.⁸⁸

And certain other modifications were made. A factory used south of 40 may not be used for that purpose elsewhere within twelve months of the end of the open season in the south nor shall it operate in territorial waters, unless already doing so in 1937, but must lie at anchor and work only six months per year,—that is, become a shore station (Article 3). This is aimed at efforts to evade the floating factory provisions of the agreement by converting ships into shore stations. Exceptions are made to the size limits of the agreement to secure the adherence of Denmark, whose subjects in the Faroes eat whale meat; baby whales may now be taken by land stations for human or for animal food (Article 4). Whales taken in the open season may be finished up after it closes (Article 5). The sperm whale is removed from the protection of Article 8 of the Agreement (Article 6), again to please the Japanese, whose land stations work mainly on this animal and for more than six months in the year. Article 12 of the Agreement is rewritten (Article 8) in the interest of easier application.⁸⁹ The rest is formal; the protocol was signed and duly came into effect on June 29 by proclamation of Lord Halifax.⁹⁰ Eight governments accepted the Agreement and

⁸⁷ Final Act 1938, par. 14.

⁸⁸ Protocol, Article 7.

⁸⁹ Taking whales for delivery to a factory is to be regulated so that no carcass remains in the sea over 33 hours between killing and hauling on deck for treatment.

⁹⁰ USTS 944. Like the Agreement, it was effective for a year subject to extension.

protocol in full;⁹¹ Argentina, Australia, Denmark, and South Africa have expressed their intention of putting them into effect, and France agreed to do likewise, reserving the right to keep three land stations, including anchored floating factories, in the southern hemisphere regardless of any regulations to be made hereafter. Japan agreed to come in with a reservation as to the use of factories in territorial waters and after the end of the open season, but never did so.

The conference expressed itself as pleased⁹² that some governments, notably the German, were proposing to mark whales in an effort to find out the scope of their migrations and that Great Britain, Norway, and the United States had enacted laws adequate to control the transfer of registered ships. It was observed that fifteen right whales had been killed in 1937, including four carrying young; the figure is not large but neither is the right whale population, and it appears that the killing was done by South African whalers, who though not bound by the Agreement and Protocol are bound by the Geneva Convention.⁹³ Lastly another meeting was recommended.

Despite the sultry international air, a third London Conference was held on July 17, 1939. The delegates discussed more protection for the humpback, more uniformity in the matter of inspectors on board ship, and the possibility of getting Japanese adherence; but they made no new law, apparently feeling that informal recommendations followed by local acts would be good enough. The existing rules were extended for a year but the outbreak of war prevented their confirmation;⁹⁴ it seems, then, that governments still in the business are now free to do as they like, subject only to the Geneva Convention.

⁹¹ Final Act 1938.

⁹² Final Act 1938, paragraphs 23 and 24.

⁹³ *Ibid.*, paragraph 22 and Leonard, *op. cit.*, p. 109.

⁹⁴ *Fauna Journal* for December, 1939, p. 27, quoting *Norsk Hvalfangst Tidende*, September, 1939, p. 343.

The question whether general conventions or bilateral agreements lead to better results has been the matter of some discussion.⁹⁵ The principal argument against the first has been the difficulty of getting real regulations which so many parties will accept; yet you must do just this in the end, no matter what method you choose. The great difficulty with the bilateral device, as Jessup shows,⁹⁶ is the danger that one party may evade the law by registering under the flag of a non-signatory, as the parties contrived to do after the French refusal to sign the North Sea Convention of 1887 conveniently opened a tidy loophole. There seems to have been no attempt to do this in the whaling industry, despite the imposing list of nations which have not signed anything, perhaps because it has proved to be unnecessary.

We see therefore, that a law of diminishing returns applies to the international regulation of whaling. Let us now have a look at the state of the law in the principal whaling nations. Norway passed a new law in the spring of 1939,⁹⁷ but it is simply a consolidation of the existing acts from 1924 to 1935 and in no respect goes beyond the international requirements though it does conform to them throughout. Section 8 of the regulations promulgated under the law is, however, interesting. It requires that within thirty-three hours from the taking of a whale it must not only be treated and the fact recorded, but notice must be given. If found workable, and this unfortunately I have no evidence on, this shows the practicability of keeping a central control list of whales taken which is nearly abreast of the actual taking, and hence the possibility of a global quota, or gross bag limit, which when reached would end the season for all hands. This device, talked of at probably every conference,

⁹⁵ Jessup, P. C., *Exploitation des Richesses de la Mer*, p. 102 ff.; Bougault, E., *Protection des Animaux*, p. 230, favoring single agreements.

⁹⁶ *Op. cit.*, p. 102.

⁹⁷ *Fauna Journal*, December, 1939, *supra*; the reference also contains a summary of previous Norwegian acts.

has never got into international law, but is about the only measure likely to solve the difficult conservation problem.⁹⁸

Japan, no party to the whaling treaties, has taken some protective measures,⁹⁹ but the efficacy of actual regulation there is a matter of some obscurity.

The position of the United States is curious. We have as before been slow in bringing our law up to date;¹⁰⁰ a bill introduced by Gillette of Iowa passed the Senate on March 8, 1939 but stalled in the House Committee on Foreign Affairs because of objections by the operating companies. A year later (March 12, 1940) Mr. Bloom introduced a new bill in the House but other things soon possessed the American mind, and we continue to lag behind on the point. The nearest thing to sufficient protection in our law has come not at the behest of conservers but of commercial farmers and fishermen, in the form of a clause in the 1938 revenue act¹⁰¹ which puts a levy of three cents a pound, or about a hundred per cent ad valorem on whale oil produced with the aid of foreign killer ships, in order to protect the domestic oils with which it competes. Since the American industry operated only a factory and relied on Norwegians for the actual killing, this effectively hit *all* oil coming to the United States and slowed down the growth of the business, as it would have cost about three million dollars to build and equip our own catchers.

Of action taken to enforce the treaty provisions, there is far too little to say. The first suit instituted seems to have been a \$150,000 libel filed against the cargo of the *Frango* late in

98 See Leonard's conclusions, *op. cit.*, pp. 112-3, and recommendations of the Copenhagen Council, *supra*.

99 Ordinance 19, July 25, 1939, and 22, June 8, 1938, Ministry of Agriculture and Forestry; see Stowell, *op. cit.*, 1940.

100 See Stowell, E. C., "Cooperation of the United States in the Conservation of Whales," 34 *American Journal of International Law* 324, April, 1940.

101 See *Time*, August 14, 1939, and *New York Times*, articles in August, 1939.

1938.¹⁰² Lieutenant T. R. Midtlyng of the Coast Guard, assigned to the vessel as inspector, testified to the killing of twenty-seven nursing cows and thirty-one undersized whales in the waters off Australia; the American Whaling Company defended on the ground that identification was difficult and so on. Men good for a winter's whaling in the Antarctic are not ordinarily selected for solicitous manners, and the lieutenant's life aboard ship was by his own statement a painful one, the crew having treated him as practically an outcast throughout the voyage. In another case¹⁰³ a cargo of the Western Operating Company was libelled on the ground the crew had taken twenty undersized whales, nineteen blues and a fin. (Both cases were still pending in March 1941).

In the last years of peace, Norway which formerly did two-thirds of the business found its position challenged, as new nations entered the competition, stirred in part no doubt by the world-wide effort for self-sufficiency and national defense.¹⁰⁴ Germany, for example, was once a chief reexport market for the Norwegians, but of late years did more and more of her own catching. With a slight decline in the number of stations and ships in service, Norway lost the lead to Great Britain in the season ending 1935, and never regained it though the margin between these nations is not great. Together they still took over sixty per cent of all Antarctic oil harvested in 1939,—the last season for which we have records,¹⁰⁵ though the United States was still increasingly in the picture in a modest way, and

102 US vs. 423, tons more or less of whale oil. See Leonard, *op. cit.*, p. 110, and *New York Herald Tribune*, Dec. 7, 1938.

103 US vs. 1483 barrels of Whale Oil. *Ibid.*

104 For figures on oil volume, number of ships and expeditions, see IWS, and accompanying tables. Norway still tops all comers for size of single vessels, having put in service the Terje Viken of 30,000 T. which takes ten catchers to keep it busy. Kellogg, "Whales Giants of the Sea," *National Geographic Magazine*, January, 1940, p. 40.

105 IWS 1940. Reports for all areas did not get published in time.

Japan and Germany were showing alarming advances both as to amount and per cent of business done.

The Japanese had long limited their operations to home waters and fished only for local consumption¹⁰⁶ with a fleet never exceeding thirty-five vessels to 1932, and taking an average of fifty-five whales per boat, but in recent years they have raided the Antarctic without even the limited laws that hamper other nations and in 1939 six factories and forty-nine catchers took a sixth of the oil crop. Germany, apparently not even in the business before 1937, was doing an eighth of the total in 1939. For the United States, which for years had piddled away at the dying Arctic fishery with fourteen vessels, all but one under a thousand tons,¹⁰⁷ while complaining of competition from low Norwegian wages,¹⁰⁸ a modest resurrection began with the sending of a factory to Australia in 1930 by the American Whaling Company and continued with the purchase of the 12,000-ton *Ulysses* by H. J. Isbrandtsen¹⁰⁹ in 1937; but the American companies never have taken over five per cent of the year's haul.

Before 1935 nearly all labor was recruited in Norway regardless of the expedition's ownership, but the recent tendency has been to seek labor at home, thus raising a new question; for with the shrinking of the field for jobs, the Norwegians are—or were—less and less willing to consider any measures leading to personnel limitation.¹¹⁰

Where are we now? The right whale, the young whale, and the nursing mother get a certain protection,—if the law is enforced. The successive agreements imposed a closed season—

106 Murphy, R. C., "Slaughter Threatens End of Whales," *New York Herald Tribune*, March 15, 1940.

107 Vallance, W. R., *op. cit.*, pp. 112, 115, 1937.

108 See Hearings, House of Representatives Committee on Merchant Marine and Fisheries, 73rd Cong., 2nd Sess., Jan. 31, 1934, p. 38.

109 *Time*, article, *supra*.

110 See Leonard, *op. cit.*, p. 112.

when the whaling is no good anyway,—and a closed area—to which whalers have never resorted. The presumptive best solution hinted by the Copenhagen Council, an overall limit, or quota, which when reached will end the season, remains untried, though there is evidence that an accurate tally could be kept by a central office on the basis of radio reports from the fleet at sea. But the nations fight for their own lives today, and all's fair; the future can wait. Meantime the natural lust for getting it while you can is magnified till there seems little hope of preserving any animal worth capturing. "The number of whales being slain is at least fourfold what the oceans can endure on a long-term basis, yet the goal of reasonable and hence perpetual utilization seems farther off than ever."¹¹¹

This is not all; for the coming of war enhanced the demand for all fatty stuffs and blasted for good the hopes of some that overproduction and falling price might automatically regulate the industry at last. The price of oil had indeed been trending downward¹¹² since 1920, but in the first three months of battle it leaped from £12 to £27 per ton in the British market.¹¹³ What we may expect is indicated by the fact that in the last great war it touched a high of £80. The start of the 1940 season was somewhat delayed by events, but presently got well under way with eight British and two South African factories setting out for the harvest before the end of 1939. The Norwegian home industry has of course been disrupted, but it is reported that at the time of the invasion nearly all of the fleet was still at sea and therefore subject to British use and disposal.¹¹⁴ The Japanese

¹¹¹ Murphy, *op. cit.*

¹¹² Leonard, *op. cit.*, p. 103 and IWS: Mr. Leonard's study is very thorough; I regret that I am unable to concur in the optimistic conclusions reached by him.

¹¹³ "The War and Whaling," *Fauna Journal*, December, 1939, reprint in ACIWLP file.

¹¹⁴ CBS radio report, April 16, 1940.

proclaim their intention ¹¹⁵ of monopolizing the Antarctic for the duration, and their practical chances of doing this are very good. Presumably there will be an all-round relaxing of rules; in the last war the regulations against waste were so relaxed with a view to the utmost possible output of oil for use in manufacture "for imperial purposes." ¹¹⁶

It appears then, in melancholy distinction from the fur seal case, that while much has been put on paper little has really been accomplished to protect the whale, indeed the entire effort has been close to ineffectual. Yet could one but move with the restraint so rarely found in human economies, these unique and fascinating creatures could surely be preserved to be a wonder to our children and an enduring source of wealth.

FIGURES ON WORLD WHALE CATCH 1920-1939 (From IWS seriatim)

| | 1920 | 21 | 22 | 23 | 24 | 25 | 26 | 27 | 28 | 29 |
|---------------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| total | 11369 | 12174 | 13940 | 18120 | 16839 | 23253 | 28193 | 24175 | 23524 | 27896 |
| Antarctic ... | 5441 | 8448 | 7023 | 9910 | 7271 | 10488 | 14219 | 12665 | 13775 | 20341 |
| blues | 2861 | 3473 | 6986 | 9252 | 5659 | 9215 | 6552 | 10234 | 10459 | 14294 |
| fins | 4886 | 8134 | 3202 | 5122 | 4413 | 6385 | 14625 | 6246 | 5816 | 9819 |
| humps | 340 | 363 | 18 | 837 | 363 | 621 | 600 | 189 | 23 | 63 |

| | 1930 | 31 | 32 | 33 | 34 | 35 | 36 | 37 | 38 | 39 |
|--------------|-------|-------|-------|-------|-------|-------|-------|-------|-------|--------|
| total | 37674 | 42874 | 12797 | 28668 | 32167 | 39254 | 44782 | 51256 | 54664 | ? |
| Antarctic .. | 30167 | 40201 | 9572 | 24327 | 26087 | 31808 | 30991 | 34579 | 46039 | 38356 |
| blues | 17975 | 30495 | 6886 | 19158 | 17468 | 16834 | 18108 | 14635 | 15034 | 14081* |
| fins | 14935 | 11433 | 2606 | 6940 | 8617 | 14078 | 12138 | 17631 | 29590 | 20784* |
| humps | 898 | 642 | 190 | 420 | 2225 | 4031 | 7707 | 9797 | 5049 | 883* |

* 1939 figures for Antarctic only; others are not available.

115 *Fauna Journal*, article, *supra*.

116 *A & P*, 1920 (Cd. 508.1), vol. 32, p. 149.

NOTE: The four graphs in this chapter were drawn by Mr. L. R. Tschirky, to whom my thanks are due.

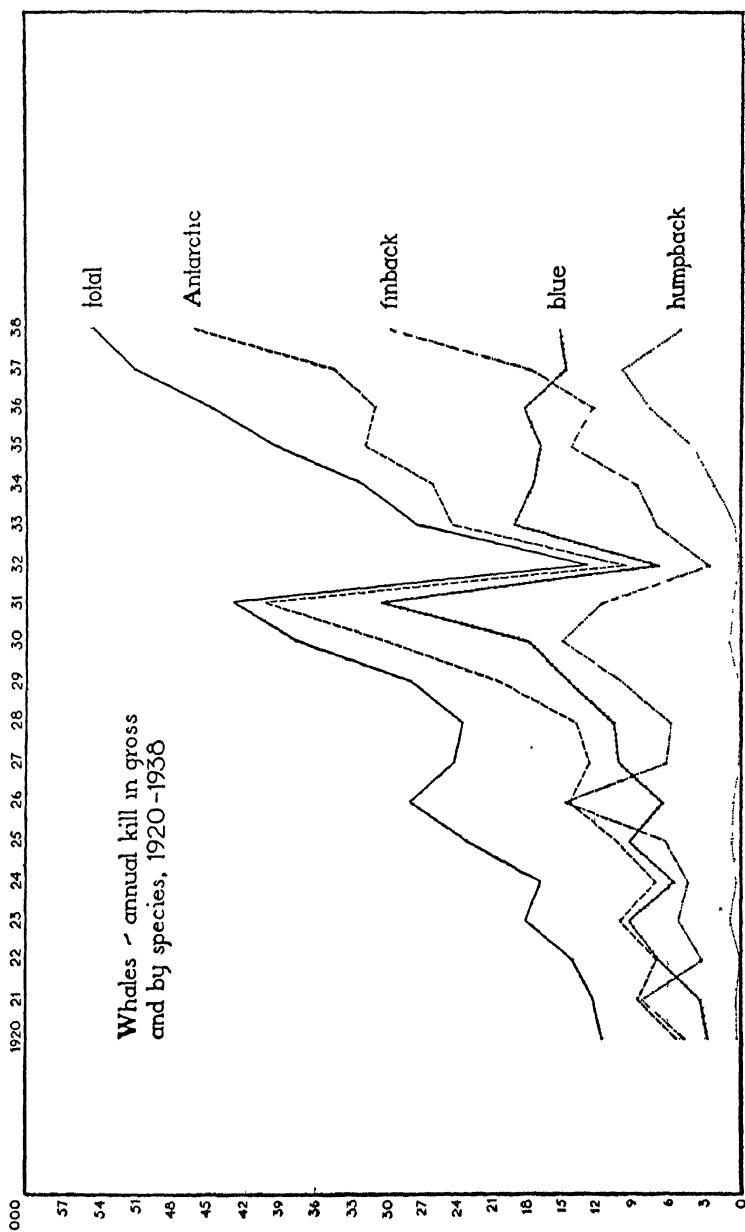
STANDING OF THE VARIOUS COUNTRIES, 1920-1939, MEASURED IN THOUSANDS OF
BARRELS OF OIL, AND NUMBER OF STATIONS

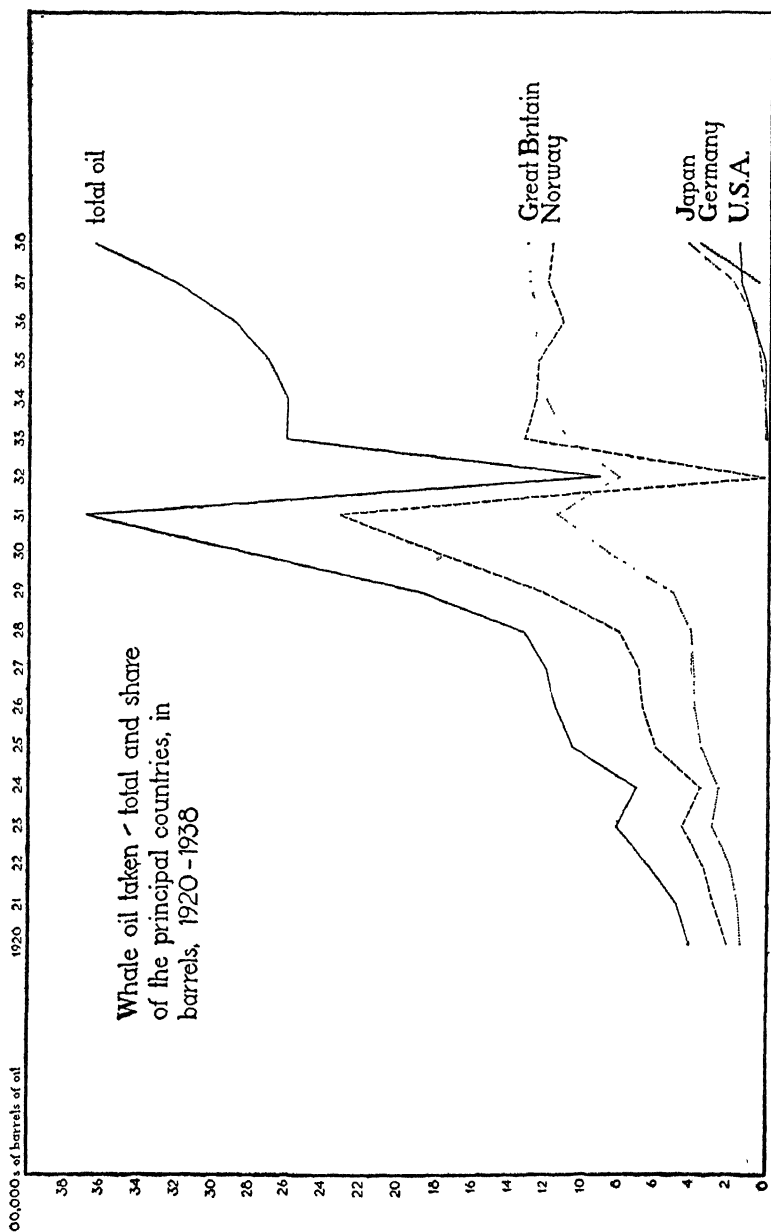
| | 1920 | 21 | 22 | 23 | 24 | 25 | 26 | 27 | 28 | 29 |
|-------------------------|------|------|-----|-----------|-----------|-----------|------------|------------|------------|-----------|
| total | 407 | 471 | 639 | 817 | 716 | 1040 | 1153 | 1192 | 1321 | 1886 |
| Norway | 211 | 279 | 332 | 439 | 367 | 597 | 663 | 689 | 799 | 1210 |
| Great Britain | 137 | 141 | 196 | 286 | 258 | 348 | 380 | 389 | 400 | 513 |
| other | 59 | 51 | 111 | 92 | 91 | 96 | 110 | 113 | 122 | 163 |
| | | | | | | | | | | |
| | 1930 | 31 | 32 | 33 | 34 | 35 | 36 | 37 | 38 | 39 |
| total oil | 2799 | 3687 | 915 | 2597 | 2573 | 2691 | 2871 | 3210 | 3635 | 2820* |
| Norway oil | 1796 | 2317 | 28 | 1317 | 1253 | 1239 | 1116 | 1192 | 1169 | 843 |
| expeditions† | | | | 2, 12, 74 | 2, 13, 78 | 3, 16, 98 | 0, 13, 82 | 4, 16, 102 | 4, 11, 95 | 0, 12, 90 |
| Great Britain oil | 857 | 1131 | 803 | 1180 | 1191 | 1288 | 1238 | 1286 | 1305 | 847 |
| expeditions... | | | | 3, 8, 72 | 5, 8, 70 | 6, 9, 91 | 8, 11, 131 | 8, 15, 146 | 4, 11, 117 | 1, 9, 79 |
| U. S. A. oil | | | | 13 | 25 | 25 | 81 | 150 | 166 | 93 |
| expeditions | | | | 1, 1, 5 | 2, 1, 9 | 2, 1, 9 | 2, 2, 15 | 2, 3, 22 | 1, 2, 20 | 0, 1, 8 |
| Japan oil | | | | 22 | 23 | 42 | 74 | 189 | 422 | 483 |
| expeditions | | | | ?, 2, 20 | ?, 2, 21 | 0, 1, 24 | 17, 1, 28 | 8, 2, 37 | 21, 4, 55 | 0, 6, 49 |
| Germany oil | | | | ? | ? | ? | ? | 62 | 370 | 374 |
| expeditions | | | | | | | | 0, 1, 6 | 0, 5, 38 | 0, 5, 41 |
| other oil | 146 | 239 | 83 | 63 | 81 | 97 | 362 | 331 | 203 | 180 |

* 1939 figures for Antarctic only.

† The three figures stand respectively for numbers of shore stations, floating factories, and whale catchers.

6 barrels of oil = about 1 ton.





CONCLUSION

WHEN I undertook this work, I hoped to set forth more significant results and more promising conclusions than the facts turn out to permit. In each case the remedy has fallen short of the need, in some cases tragically so, and always for the same reason—the active opposition of a few, who fear the danger to their killing rights, and the blank indifference of the many.

Achievement has measured up neither to need nor to hopes. The Africa Convention, admirable in principle, yet contains weaknesses and has been applied in such limited ways that self-congratulation would be premature, while efforts to extend it, as logically and biologically it should be, to the tropical orient have utterly failed. The protection of migratory waterfowl in America is but piecemeal and insufficient; the ordinary game laws, in the North, may be satisfactory in content and administration—though even here a perennial controversy rages—but the birds are not yet secure either on their breeding or their wintering grounds and South America lags behind the whole program; while in Europe the Paris Convention, unamended since 1902 and ignored by a number of nations, certainly cannot be called a practical success. The seal convention, alone on the list, has been a genuine triumph, yet even here the future looks a bit uncertain, and as for the whales, the figures show a grievous failure to meet the menace of disaster. War, not law, has changed the situation there, and only by threatening to substitute the Japanese for the Norwegians as chief executioners. All this is not too encouraging as a record of performance.

We have further seen that a kind of graph of international activity could be traced, reaching a fairly high point at the turn of the century with the conclusion of the conventions of 1900 and 1902, showing another rise in the period of the seal convention (1911), the Bern Conference (1913), and the migratory bird treaty (1916) only to lapse completely with the years of war and reconstruction, and slowly rallying, through the agency of private rather than official organizations to reach a new

climax in the thirties, in the twilight of the armistice years, the years that saw the Africa convention, the draft amendments to the bird convention, new agreements in the Americas (1937, 1940) and all the whaling treaties. It suggests that active government interest in a non-political subject is hard to stir except in a rather long period of peace, and makes the immediate outlook for future legislation as unpromising as the present is disappointing.

One other aspect of the story remains for treatment. From the handling of our particular problems in international legislation, certain broad general principles of procedure emerge. For one thing, granting the general resistance to change which humanity can be counted on to show, it is clearly useless for governments, individuals, or associations to attempt legislative reform without a genuine and demonstrable interest, in which a sufficient number of people believe and which they are willing to support effectively, and which is not opposed by too much economic power. If the whales are ever saved at all, it will be with the aid of the professional whalers themselves, not over their determined resistance,—they must become convinced at last that action is necessary to save the business. The fur seals were saved in the nick of time when the British and Canadian interest was converted in this way. In the protection of North American birds, a measure of foresight induced by years of education triumphed over settled habits and ancient custom, while in much of Europe this has not occurred. In Africa, the scientific and aesthetic value of the game appealed at last more effectively than the primitive urge to kill, and made international action possible. In each of these cases a substantive interest in action has been strong enough to meet and to a greater or less degree outweigh the opposition, whether of contrary interest or of simple inertia; and it is not likely that the facts will ever be otherwise.

It is further worth noting that in no case discussed was an international administrative body created, though certain administrative functions have been conferred elsewhere than on

the several signatory governments, extending at least to the collection of information. By the London Convention on Africa, the British government is given certain supervisory powers, by the Pan American Convention the Pan American Union; in the Paris Convention the French government is similarly designated, and a recent proposal would transfer the function to the International Institute of Agriculture at Rome; while by the Whaling Convention the International Bureau for Whaling Statistics is made a sort of central office. It is suggested that in every case, the administration of the convention would be facilitated by investing a particular body with the responsibility for its supervision, not primarily for the purpose of enforcement, which in the foreseeable future will remain a function of the national governments, but to maintain interest, to obtain facts, to promote further action as it becomes desirable, and to give publicity both to infringements and to tangible achievements.

In this matter of information collection, it must have struck the reader that there is not a single case discussed in which all the facts are known, and that so long as this is so, the opponents of any of these laws can argue that either present regulation or its further extension is unnecessary, or prejudicial, or both, with no possibility of proving them wrong. A central information office or its equivalent would in each instance be a fair assurance of continued research.

All this is for other days. We cannot hope for much advance in wild life preservation when the preservation of any institutions whatever seems almost in doubt. Yet we must not despair. The fact that so many men over the years have given their time and their best energies to a work that yields so little, and to themselves generally nothing at all, indicates a human perseverance in seeking the good against odds that is very heartening. Beside the traditional insistence on economic value, or at least on value to scientists or sportsmen, is growing an unmistakable belief in the right to life which rests on plain aesthetic and

humanitarian grounds. As an English author writes:¹ "It is striking to notice that in relation to animals against which there is not a very clear case, there is a regard for the claims of beauty and interest and humanity and other intangible qualities to be weighed against the claims of sheer utilitarianism."

Something at least has been done for wild life, and little by little more will be,—must be, if the effort is maintained and the winter of war gives way again as at last it will to another springtime. John Phillips has said,² "Agreements among nations in the field of conservation, whether based on economics or not, help to build up a unified cultural background, to develop an aesthetic response to nature which ought to be part of the common inheritance of mankind." Let me close as I began, with this statement of the preserver's philosophy, and ask that it be remembered when the springtime comes again.

1 Comment in 173 *Law Times*, pp. 212-213, March 9, 1932, concerning the pending bill to protect the grey seal.

2 "Migratory Bird Protection in North America," ACIWLP # 4, 1934, p. 3.

APPENDICES

1. Convention relative to the Preservation of Flora and Fauna in their Natural State, London, November 8, 1933, 172 LNTS 242.
2. Draft convention on Nature Protection and Wild Life Preservation in the Western Hemisphere, October 13, 1940.
3. Convention between the United States and Great Britain—Protection of Migratory Birds, August 16, 1916, USTS 628.
4. Convention between the United States of America and Mexico—Protection of Migratory Birds and Game Mammals, February 7, 1936, USTS 912.
5. International Convention concerning the Conservation of Birds Useful to Agriculture, 30 Nouv. Rec. gén. 2me, 686.
6. Convention between the United States and other Powers providing for the Preservation and Protection of Fur Seals, July 7, 1911, USTS 564.
7. Convention for the Regulation of Whaling, Geneva, September 24, 1931, USTS 880.
8. Agreement between the United States of America and other Powers, London, June 8, 1937, USTS 933.
9. Protocol of June 24, 1938, amending the Whaling Agreement of June 8, 1937.

APPENDIX I

CONVENTION RELATIVE TO THE PRESERVATION OF FLORA AND FAUNA IN THEIR NATURAL STATE, LONDON, NOVEMBER 8, 1933.

172 LNTS 242

The governments of the Union of South Africa, Belgium, the United Kingdom of Great Britain and Northern Ireland, Egypt, Spain, France, Italy, Portugal, and the Anglo-Egyptian Sudan considering that the natural flora and fauna of certain parts of the world, and in particular of Africa are in danger in present conditions of extinction or permanent injury; desiring to institute a special regime for the preservation of flora and fauna; considering that such preservation can best be achieved (i) by the constitution of national parks, strict natural reserves, and other reserves within which the hunting, killing or capturing of fauna, and the collection or destruction of flora shall be limited or prohibited, (ii) by the in-

stitution of regulations concerning the killing, hunting, capturing of fauna outside such areas, (iii) by the regulation of traffic in trophies, and (iv) by the prohibition of certain methods of and weapons for the hunting, killing, and capturing of fauna have decided to conclude a convention for these purposes, and have appointed as their plenipotentiaries :

South Africa: Mr. C. T. te Water, high commissioner for the Union of South Africa in the United Kingdom; Sir Arthur W. Hill, K.C.M.G., F.R.S., director of the Royal Botanic Gardens, Kew.

Belgium: H. E. Baron de Cartier de Marchienne, the Belgian ambassador; Dr. Van Straelen, director of the Royal Natural History Museum, Brussels; Dr. J. M. Derscheid, director of the King Albert National Park, director of the International Office for the Protection of Nature.

Great Britain: the Right Honorable the Earl of Onslow; Sir William F. Gowers, K.C.M.G., formerly governor of Uganda; Sir Arnold Hodson, K.C.M.G., governor of Sierra Leone; Mr. A. B. Acheson, colonial office; Mr B. F. Wright, official secretary, office of the High Commissioner for Southern Rhodesia;

Egypt: Dr. Ibrahim Kadry, director of the Zoological Gardens, Giza;

Spain: H. E. Don Ramon Pérez de Ayala, the Spanish ambassador;

France: M. Louis Ruffat, director of the Game Department, the ministry of the colonies;

Italy: Gr. Uff. Dr. Tullio Zedda, secretary general, royal ministry of the colonies; March. Saverio Patrizi;

Portugal: H. E. Dr. Ruy Ennes Ulrich, the Portuguese ambassador; Dr. Carlos Mello Geraldès, professor at the higher institute of agronomy, Lisbon; Dr. Luis Wittnich Carrisso, professor university of Coimbra;

Anglo-Egyptian Sudan: Maj. W. R. Barker, O.B.E., game warden; who, having communicated their full powers, found in good and due form, have agreed on the following provisions:

ARTICLE I.

1. Save as regards the territories mentioned in Paragraph 3 (i) of the present article, any contracting government shall be at liberty, in accordance with the provisions of Article 13, to assume, in respect of any of its territories (including metropolitan territories, colonies, oversea territories or territories under suzerainty, protection, or mandate) only those obligations of the present convention which are set out in Article 9, Paragraphs 3, 8 and 9. The term "in part" in the present convention shall be deemed to refer to those obligations.

2. The expression "territory" or "territories" in relation to any contracting government shall, for the purposes of articles 2 to 12 of the present convention, denote the territory or territories of that government to which the convention is applicable in full; and, subject to the provisions of the preceding paragraph and of Article 13, the obligations arising under Articles 2 to 12 shall relate only to such territories.

3. The present convention shall apply and shall be applicable in full to (i) all the territories (i. e. metropolitan territories, colonies, overseas territories, or territories under suzerainty, protection or mandate) of any contracting government which are situated in the continent of Africa, including Madagascar and Zanzibar; (ii) any other territory in respect of which a contracting government shall have assumed all the obligations of the present convention in accordance with the provisions of Article 13.

4. For the purposes of the present convention the British High Commission Territories in South Africa shall be regarded as a single territory.

5. The present convention shall not have any application either in full or in part, to any metropolitan territory not situated in the continent of Africa except where and to the extent to which a declaration effecting such application is made under Article 13.

ARTICLE 2.

For the purposes of the present convention:

1. The expression "national park" shall denote an area (a) placed under public control, the boundaries of which shall not be altered or any portion be capable of alienation except by the compe-

tent legislative authority, (b) set aside for the propagation, protection, and preservation of wild animal life and wild vegetation, and for the preservation of objects of esthetic, geologic, prehistoric, historical, archaeological, or other scientific interest for the benefit, advantage, and enjoyment of the general public, (c) in which the hunting, killing, or capturing of fauna and the destruction or collection of flora is prohibited except by or under the direction or control of the park authorities.

In accordance with the above provisions facilities shall, so far as possible, be given to the general public for observing the flora and fauna in national parks.

2. The term "strict natural reserve" shall denote an area placed under public control, throughout which any form of hunting or fishing, any undertakings connected with forestry, agriculture, or mining, any excavations or prospecting, drilling, levelling of the ground, or construction, any work involving the alteration of the configuration of the soil or the character of vegetation, any act likely to harm or disturb the fauna or flora, and the introduction of any species of fauna and flora, whether indigenous or imported, wild or domesticated, shall be strictly forbidden; which it shall be forbidden to enter, traverse or camp in without a special written permit from the competent authorities; and in which scientific investigations may only be undertaken by permission of those authorities.

3. The expression "animal" or "species" shall denote all vertebrates and invertebrates (including non-edible fish, but not including edible fish except in a national park or strict natural reserve) their nests, eggs, egg-shells, skins, and plumage.

ARTICLE 3.

1. The contracting governments will explore forthwith the possibility of establishing in their territories national parks and strict natural reserves as defined in the preceding article. In all cases where the establishment of such parks or reserves is possible the necessary work shall be commenced within two years from the date of the entry into force of the present convention.

2. If in any territory the establishment of a national park or strict natural reserve is found to be impracticable at present, suit-

able areas shall be selected as early as possible in the development of the territory concerned, and the areas so selected shall be transformed into national parks or strict natural reserves as soon as in the opinion of the authorities of the territory, circumstances will permit.

ARTICLE 4.

The contracting governments will give consideration in respect of each of their territories to the following administrative arrangements:

1. The control of all white or native settlements in national parks with a view of ensuring that as little disturbance as possible is occasioned to the natural flora and fauna.

2. The establishment round the borders of national parks and strict natural reserves of intermediate zones within which the hunting, killing, and capturing of animals may take place under the control of the authorities of the park or reserve; but in which no person who becomes an owner, tenant or occupier after a date to be determined by the authority of the territory concerned shall have any claim in respect of any depredations caused by animals.

3. The choice in respect of all national parks of areas sufficient in extent to cover so far as possible the migrations of the fauna preserved therein.

ARTICLE 5.

1. The contracting governments shall notify the government of the United Kingdom of Great Britain and Northern Ireland of the establishment of any national parks or strict natural reserves (defining the areas of the parks or reserves) and of the legislation, including the methods of administration and control adopted in connection therewith.

2. They shall similarly notify any information relevant to the purposes of the present convention and communicated to them by any national museums or by any societies, national or international, established within their jurisdiction and interested in those purposes.

3. The government of the United Kingdom will communicate the information so received to the other governments which have signed or acceded to the present convention whether in full or in part.

ARTICLE 6.

In all cases in which it is proposed to establish in any territory of a contracting government a national park or strict natural reserve contiguous to a park or reserve situated in another territory (whether of that government or of another contracting government) or to the boundary of such territory, there shall be prior consultation between the competent authorities of the territory concerned. Similarly, there shall be cooperation between these authorities subsequent to the establishment of the park or reserve or where such park or reserve is already established.

ARTICLE 7.

Irrespective of any action which may be taken under article 3 of the present convention, the contracting governments shall, as measures preliminary and supplemental to the establishment of national parks or strict natural reserves:

1. Set aside in each of their territories suitable areas (to be known as reserves) within which the hunting, killing or capturing or any part of the natural fauna (exclusive of fish) shall be prohibited save (a) by the permission, given for scientific or administrative purposes in exceptional cases by the authorities of the territory or by the central authorities under whom the reserves are placed or (b) for the protection of life or property. Licenses granted under Article 8, paragraphs 1 and 3, shall not extend to reserves.

2. Extend in those areas, so far as may be practicable, a similar degree of protection to the natural flora.

3. Consider the possibility of establishing in each of their territories special reserves for the preservation of species of flora and fauna which it is desired to preserve but which are not otherwise adequately protected, with special reference to the species mentioned in the annex to the present convention.

4. Furnish information regarding the reserves established in accordance with the preceding paragraphs to the government of the United Kingdom, which will communicate such information to all the governments mentioned in Article 5, paragraph 2.

5. Take, so far as in their power lies, all necessary measures to ensure in each of their territories a sufficient degree of forest coun-

try and the preservation of the best native indigenous forest species, and, without prejudice to the provisions of Article 2, paragraph 2, give consideration to the desirability of preventing the introduction of exotic trees or plants into national parks or reserves.

6. Establish as close a degree of cooperation as possible between the competent authorities of their respective territories with the object of facilitating the solution of forestry problems in those territories.

7. Take the necessary measures to control and regulate, so far as possible, the practice of firing the bush on the borders of forests.

8. Encourage the domestication of wild animals susceptible of economic utilization.

ARTICLE 8.

The protection of the species mentioned in the Annex to the present convention is declared to be of special urgency and importance. Animals belonging to the species mentioned in Class A shall, in each of the territories of the contracting governments, be protected as completely as possible, and the hunting, killing, or capturing of them shall only take place by special permission of the highest authority in the territory, which shall be given only under special circumstances, solely in order to further important scientific purposes, or when essential for the administration of the territory. Animals belonging to the species mentioned in Class B, whilst not requiring such rigorous protection as those mentioned in Class A, shall not be hunted, killed or captured, even by natives, except under special license granted by the competent authorities. For this purpose a special license shall denote a license other than an ordinary game license, granted at the discretion of the competent authorities, and giving permission to hunt, kill or capture one or more specimens of a specified animal or animals. Every such license shall be limited as regards the period and the area within which hunting, killing or capturing may take place.

2. No hunting or other rights already possessed by native chiefs or tribes or any other persons or bodies, by treaty, concession, or special agreement, or by administrative permission in those areas in which such rights have already been definitely recognized by the authorities of the territory are to be considered as being in any way prejudiced by the provisions of the preceding paragraph.

3. In each of the territories of the contracting governments the competent authorities shall consider whether it is necessary to apply the provisions of paragraph 1 of the present article to any species not mentioned in the Annex, in order to preserve the indigenous flora or fauna in each area, and, if they deem it necessary, shall apply those provisions to any such species to the extent which they consider desirable. They shall similarly consider whether it is necessary in the territory concerned to accord to any of the species mentioned in Class B of the Annex the special protection accorded to the species mentioned in Class A.

4. The competent authorities shall also give consideration to the question of protecting species of animals or plants which by general admission are useful to man or of special scientific interest.

5. Nothing in the present article shall (i) prejudice any right which may exist under the local law of any territory to kill animals without a license in defense of life or property or (ii) affect the right of the authorities of the territory to permit the hunting, killing, or capturing of any species (a) in time of famine, (b) for the protection of human life, public health or domestic stock, (c) for any requirement relating to public order.

6. Each contracting government shall furnish to the government of the United Kingdom information on the subject of the measures adopted in each of its territories in regard to the grant of licenses, and in regard to the animals, the destruction article, not permitted except under license. The government of the United Kingdom will communicate any such information to all the governments mentioned in Article 5, paragraph 2.

ARTICLE 9.

1. Each contracting government shall take the necessary measures to control and regulate in each of its territories the internal and the import and export traffic in, and the manufacture of articles from, trophies as defined in paragraph 8 of the present article, with a view to preventing the import or export of, or any dealing in, trophies other than such as have been originally killed, captured, or collected in accordance with the laws and regulations of the territory concerned.

2. The export of trophies at any destination whatsoever shall be prohibited unless the exporter has been granted a certificate permit-

ting export and issued by a competent authority. Such certificate shall only be issued where the trophies have been lawfully imported or lawfully obtained. In the event of an attempted export without any certificate having been granted, the authorities of the territory where this attempt takes place shall apply such penalties as they may think necessary.

3. The import of trophies which have been exported from any territory to which the present convention is applicable in full, whether a territory of another contracting government or not, shall be prohibited, except on production of a certificate of lawful export, failing which the trophy shall be confiscated but without prejudice to the application of the penalties mentioned in the preceding paragraph.

4. The import and export of trophies, except at points where there is a customs station, shall be prohibited.

5. (a) Every trophy consisting of ivory and rhinoceros horn exported in accordance with the provisions of the present article shall be identified by marks, which, together with the weight of the trophy, shall be recorded in the certificate of lawful export. (b) Every other trophy shall, if possible, be similarly marked and recorded, but shall in any event be described in the certificate so as to identify it with as much certainty as possible. (c) The contracting governments shall take such measures as may be possible by the preparation and circulation of appropriate illustrations or otherwise, to instruct their customs officers in the methods of identifying the species mentioned in the Annex to the present convention and the trophies derived therefrom.

6. The measures contemplated in paragraph 1 of the present article shall include provisions that found ivory, rhinoceros horn, and all trophies of animals found dead, or accidentally killed, or killed in defense of any person, shall, in principle, be the property of the government of the territory concerned, and shall be disposed of according to regulations introduced by that government, due regard being had to the native rights and customs reserved in the succeeding paragraph.

7. No rights of the kind specified in paragraph 2 of article 8 are to be considered as being prejudiced by the provisions of the preceding paragraph.

8. For the purposes of the present article, the expression "trophy" shall denote any animal, dead or alive, mentioned in the Annex to the Convention, or anything part of or produced from any such animal when dead, or the eggs, egg-shells, nests, or plumage of any bird so mentioned. The expression "trophy" shall not, however, include any trophy or part of a trophy which by a process of bona fide manufacture, as contemplated in paragraph 1 of the present article, has lost its original identity.

9. Each contracting government shall furnish to the government of the United Kingdom information as to the measures taken in order to carry out the obligations of the present article or any part of them. The government of the United Kingdom will communicate any information so received to all the governments mentioned in Article 5, paragraph 2.

ARTICLE 10.

1. The use of motor vehicles or aircraft (including aircraft lighter than air) shall be prohibited in territories of the contracting governments both (i) for the purpose of hunting, killing, or capturing animals, and (ii) in such manner as to drive, stampede, or disturb them for any purpose whatsoever, including that of filming or photographing; provided, however, that nothing in the present paragraph shall affect the right of occupiers in respect of land occupied by them, or of governments in respect of land utilized for public purposes, to use motor vehicles or aircraft for the purpose of driving away, capturing, or destroying animals found on such land in all cases where such ejection, capture, or destruction is not prohibited by any other provision of the present convention.

2. The contracting governments shall prohibit in their territories the surrounding of animals by fires for hunting purposes. Wherever possible, the undermentioned methods of capturing or destroying animals shall also be generally prohibited: (a) the use of poison, or explosives for killing fish; (b) the use of dazzling lights, flares, poison, or poisoned weapons for hunting animals; (c) the use of nets, pits, or enclosures, gins, traps or snares, or of set guns and missiles containing explosives for hunting animals.

ARTICLE 11.

It is understood that upon signature, ratification, or accession any contracting government may make such express reservations in

regard to Articles 3 to 10 of the present convention as may be considered essential.

ARTICLE 12.

1. Each contracting government shall furnish to the government of the United Kingdom information as to the measures taken for the purpose of carrying out the provisions of the preceding articles. The government of the United Kingdom will communicate all the information so furnished to all the governments mentioned in Article 5, paragraph 2.

2. The contracting governments shall, wherever necessary, cooperate for the purpose of carrying out the provisions of the preceding articles and to prevent the extinction of flora and fauna.

3. All the governments which sign or accede to the present convention shall be deemed to be parties to the Protocol bearing this day's date, drawn up to facilitate the cooperation mentioned in the preceding paragraph.

ARTICLE 13.

1. Any contracting government may, at the time of signature, ratification, or accession, or thereafter, make a declaration assuming in respect of any one or more of its territories (including metropolitan territories, colonies, overseas territories, or territories under suzerainty, protection, or mandate) other than those mentioned in paragraph 3 (i) of Article 1, either all the obligations of the present convention, or only those contained in Article 9, paragraphs 3, 8, and 9. If such declaration is made subsequent to ratification or accession, it shall be effected by means of a notification in writing addressed to the government of the United Kingdom, and shall take effect on the entry into force of the convention or, if the convention is already in force, three months after the date of the receipt of the notification by the government of the United Kingdom.

2. It is understood that any contracting government may, by a single declaration made under the preceding paragraph, assume in respect of some of its territories mentioned in that paragraph all the obligations of the present convention, and in respect of other such territories only the obligations contained in Article 9, paragraphs 3, 8, and 9.

3. Any contracting government which has made a declaration under the preceding paragraph, assuming, in respect of any territory, only the obligations contained in article 9, paragraphs 3, 8, and 9, may at any subsequent time, by a notification in writing addressed to the government of the United Kingdom declare that such previous declaration shall henceforth be deemed to relate to all the obligations of the convention in respect of the territory concerned; and such subsequent declaration shall take effect on the entry into force of the convention, or, if the convention is already in force, three months after the receipt of the notification by the government of the United Kingdom.

4. Any contracting government may at any time, by a notification in writing addressed to the government of the United Kingdom, determine the application of the convention to any territory or territories which have been the subject of a declaration under paragraphs 1 and 3 of the present article, and the convention shall thereupon cease to apply to the territory or territories mentioned in the notification one year after the date of its receipt by the government of the United Kingdom, provided that such notification shall in no case take effect until the expiry of the period of five years mentioned in Article 19, paragraph 1.

5. It is understood that if, as the result of a notification made under the preceding paragraph, there would remain no territories of the contracting government concerned to which the convention would be applicable either in full or in part, such government shall, instead of making the notification, proceed by way of denunciation under Article 19.

6. It is further understood that no notification made under paragraph 4 of the present article, or otherwise, may purport to apply only the provisions of Article 9, paragraphs 3, 8, and 9 to any territory to which at the time of the notification the convention applies in full.

7. The government of the United Kingdom will inform all the governments mentioned in Article 5, paragraph 2, of any notifications received under the preceding paragraphs of the present article, of the date of their receipt, and of their terms.

ARTICLE 14.

It is understood that no government will sign, ratify or accede to the present convention unless it either has territories covered by Article 1, paragraph 3 (i), or makes or has made a declaration under Article 13 assuming in respect of one or more territories the obligations of the convention either in full or in part.

ARTICLE 15.

The present convention, of which the French and English texts shall both be equally authentic, shall bear this day's date and shall be open for signature until the 31st of March 1934.

ARTICLE 16.

The present convention shall be subject to ratification. The instruments of ratification shall be deposited with the government of the United Kingdom, which will notify their receipt and the date thereof, and their terms and the terms of any accompanying declarations or reservations to all the governments mentioned in Article 5, paragraph 2.

ARTICLE 17.

At any time after the 31st of March, 1934, the present convention shall be open to accession by any government of a metropolitan territory by which it has not been signed, whether it has territories covered by Article 1, paragraph 3 (i) or not. Accessions shall be notified to the government of the United Kingdom, which will inform all the governments mentioned in article 5, paragraph 2 of all notifications received, their terms and the terms of any accompanying declarations or reservations, and the date of their receipt.

ARTICLE 18.

1. After the deposit or notification of not less than four ratifications or accessions on the part of contracting governments having territories covered by Article 1, paragraph 3 (i), the present convention shall come into force three months after the deposit or notification of the last of such ratifications or accessions, as between the governments concerned. The government of the United Kingdom will notify all the governments mentioned in Article 5, paragraph 2, of the date of the coming into force of the convention.

2. Any ratifications or accessions received after the date of the entry into force of the convention shall take effect three months after the date of their receipt by the government of the United Kingdom.

ARTICLE 19.

1. Any contracting government may at any time denounce the present convention by a notification in writing addressed to the government of the United Kingdom. Such denunciation shall take effect, as regards the government making it, and in respect of all the territories of that government to which the convention shall then apply, either in full or in part, one year after the date of the receipt of the notification by the government of the United Kingdom; provided, however, that no denunciation shall take effect until the expiry of five years from the date of the entry into force of the convention.

2. If, as a result of simultaneous or successive denunciations, the number of contracting governments bound, in respect of one or more of their territories, by all the obligations of the present convention is reduced to less than four, the convention shall cease to be in force as from the date on which the last of such denunciations shall take effect in accordance with the provisions of the preceding paragraph.

3. The government of the United Kingdom will notify all the other governments mentioned in Article 5, paragraph 2, of any denunciations so received and the date on which they take effect. The government of the United Kingdom will also, if occasion arises, similarly notify the date on which the convention ceases to be in force under the provisions of the preceding paragraph.

In witness whereof, the above named plenipotentiaries have signed the present convention.

Done in London, this eighth day of November, 1933, in a single copy, which shall remain deposited in the archives of the government of the United Kingdom of Great Britain and Northern Ireland, which will transmit certified true copies hereof to all the governments attending the conference at which the present convention has been drawn up, whether as participators or observers, as

well as to any other government to which the government of the United Kingdom may deem it desirable to communicate a copy.

(signatures)

ANNEX

Class A. 1. Animalia.

1. gorilla
2. all Madagascar lemurs
3. aardwolf
4. fossa
5. giant sable antelope
6. nyala
7. mountain nyala
8. okapi
9. Barbary stag
10. pygmy hippopotamus
11. mountain zebra
12. wild ass
13. white rhinoceros
14. northern hartebeest
15. Abyssinian ibex
16. elephant

(i) Mammalia. Primates.

- Gorilla gorilla Sav & Wym (all subsp.)
 Chiromyidae, Lemuridae, & Indusidae
 Carnivora
 Proteles cristatus Sparman
 F. fossa Gray (all subspecies)
 Ungulata
 Hippotragus niger variani Thomas
 Tragelaphus angasi Angas
 T. buxtoni Lydekker
 Okapia johnstoni Sclater
 Cervus elaphus barbarus Bennett
 Choeropsis liberiensis Morton
 Hippotigris zebra Linn (all subspecies)
 A. asinus Linn (all subspecies)
 Rhinoceros simus Burchell (all subspecies)
 Bubalis buselaphus Pallas
 Capra walie Rüppell
 Elephas africanus (this species to be included in class A only in respect of specimens whose tusks do not exceed 5 kg in weight)
 Hyemoschus aquaticus Ogilby (all subsp.)

(ii) Aves.

18. whale-headed stork Balaeniceps rex Gould
19. bald-headed ibis Comatibis eremita Linn
20. white-breasted guinea fowl Agelastes meleagrides Bonaparte

2. Vegetabilia.

21. Welwitschia

W. Bainesii Carriere

Class B. Animalia.

(i) Mammalia. Primates

1. chimpanzee
2. colobus monkey
3. giant eland
4. giraffe
5. white-tailed gnu

- Anthropopithecus Blainville (all sp.)
 Colobus illiger all ssp
 Ungulata
 Taurotragus derbianus Gray (all ssp.)
 Giraffa Zimmermann (all ssp.)
 Connochaetes gnou Zimmermann

- | | |
|-------------------------|---|
| 6. yellow backed duiker | <i>Cephalophus sylvicultrix</i> Afzelius |
| 7. Jentink's duiker | <i>C. jentinki</i> Thomas |
| 8. beira | <i>Dorcotragus megalotis</i> Menges |
| 9. Clarke's gazelle | <i>Ammodorcas clarkei</i> Thomas |
| 10. bontebok | <i>Damaliscus pygargus</i> Pallas |
| 11. black rhinoceros | <i>R. bicornis</i> Linn |
| 12. elephant | (tusks exceeding 5 kg in weight each) Edentata |
| 13. pangolin | <i>Manis</i> Linn (all sp.) |

(ii) Aves

- | | |
|--------------------------------|--|
| 14. marabou | <i>Leptoptilos crumeniferus</i> Lesson |
| 15. Abyssinian ground hornbill | <i>Bucorvus abyssinicus</i> Boddaert |
| 16. ground hornbill | <i>B. cafer</i> Schlegel |
| 17. wild ostrich | <i>Struthio</i> Linn (all African ssp.) |
| 18. secretary bird | <i>Sagittarius serpentarius</i> Miller |
| 19. little egret | <i>Egretta garzetta</i> Linn |
| 20. African great white egret | <i>Casmerodius albus melanorhynchus</i> Wagler |
| 21. African yellow billed do. | <i>Mesophoyx intermedius brachyrhynchus</i> Brehm |
| 22. buff backed heron | <i>Bubulcus ibis</i> Linn |

Protocol

At the moment of the signature of the Convention relative to the Preservation of Flora and Fauna in their Natural State which bears this day's date the Undersigned, being duly authorized to that effect by their respective governments, have agreed on the following provisions:

1. In order to facilitate cooperation for the purpose of preventing the extinction of natural flora and fauna and to examine the working of the abovementioned convention, as well as the question of any improvements which might be made to it, periodical international Conferences shall be held at appropriate intervals at which the Governments Parties to the Convention or on whose behalf the present protocol has been signed shall be represented.

2. The first of such conferences shall take place within four years from this day's date, and the arrangements in connection with it shall be made by the Government of the United Kingdom of Great Britain and Northern Ireland, which shall invite the governments referred to in Article 1 of the present protocol, together with any other government whose presence may be considered desirable.

3. It is agreed that the matters to be discussed at the above mentioned Conference shall include (a) the question of the exchange between governments of lists of persons know to have been guilty of persistent infringements of game regulations, (b) the question of the exchange of information relating to infectious or contagious diseases of importance for the preservation of flora or fauna, or capable of affecting men as well as animals.

4. Subsequent conferences shall be held at such dates and in accordance with such arrangements as may be made at the first conference.

5. The present protocol, of which the French and English texts shall both be equally authentic, shall bear this day's date and shall come into force upon signature.

In faith whereof, the undersigned have signed the present protocol.

Done &c (attestation and signatures)

APPENDIX II

DRAFT CONVENTION ON NATURE PROTECTION AND WILD LIFE PRESERVATION IN THE AMERICAN REPUBLICS, OCTOBER 12, 1940

PREAMBLE.

The governments of the American Republics, wishing to protect and preserve in their natural habitat representatives of all species and genera of their native flora and fauna, including migratory birds, in sufficient numbers and over areas extensive enough to assure them from becoming extinct through any agency within man's control;

Wishing to protect and preserve scenery of extraordinary beauty, unusual and striking geologic formations, regions and natural objects of aesthetic, historic or scientific value, and areas characterized by primitive conditions in those cases covered by this Convention; and

Wishing to conclude a Convention on the protection of nature and the preservation of flora and fauna to effectuate the foregoing purposes, have agreed upon the following Articles:

ARTICLE I.

Description of terms used in the wording of this Convention.

1. The expression *National Parks* shall denote: Areas established for the protection and preservation of superlative scenery, flora and fauna of national significance which the general public may enjoy and from which it may benefit when placed under public control.

2. The expression *National Reserves* shall denote: Regions established for conservation and utilization of natural resources under government control, on which protection of animal and plant life will be afforded in so far as this may be consistent with the primary purposes of such reserves.

3. The expression *Nature Monuments* shall denote: Regions, objects, or living species of flora or fauna of aesthetic, historic or scientific interest to which strict protection is given. The purpose of nature monuments is the protection of a specific object, or a species of flora or fauna, by setting aside an area, an object, or a single species, as an inviolate nature monument, except for duly authorized scientific investigations or government inspection.

4. The expression *Strict Wilderness Reserves* shall denote: A region under public control characterized by primitive conditions of flora, fauna, transportation and habitation wherein there is no provision for the passage of motorized transportation and all commercial developments are excluded.

5. The expression *Migratory Birds* shall denote: Birds of those species, all or some of whose individual members, may at any season cross any of the boundaries between the American countries. Some of the species of the following families are examples of birds characterized as migratory: Charadriidae, Scolopacidae, Caprimulgidae, Hirundinidae.

ARTICLE II.

1. The Contracting Governments will explore at once the possibility of establishing in their territories national parks, national reserves, nature monuments, and strict wilderness reserves as defined in the preceding article. In all cases where such establishment is feasible, the creation thereof shall be begun as soon as possible after the effective date of the present Convention.

2. If in any country the establishment of national parks, national reserves, nature monuments, or strict wilderness reserves is found to be impractical at present, suitable areas, objects or living species of fauna or flora, as the case may be, shall be selected as early as possible to be transformed into national parks, national reserves, nature monuments or strict wilderness reserves as soon as, in the opinion of the authorities concerned, circumstances will permit.

3. The Contracting Governments shall notify the Pan American Union of the establishment of any national parks, national reserves, nature monuments, or strict wilderness reserves, and of the legislation, including the methods of administrative control, adopted in connection therewith.

ARTICLE III.

The Contracting Governments agree that the boundaries of national parks shall not be altered, or any portion thereof be capable of alienation, except by the competent legislative authority. The resources of these reserves shall not be subject to exploitation for commercial profit.

The Contracting Governments agree to prohibit hunting, killing and capturing of members of the fauna and destruction or collection of representatives of the flora in national parks except by or under the direction or control of the park authorities, or for duly authorized scientific investigations.

The Contracting Governments further agree to provide facilities for public recreation and education in national parks consistent with the purposes of this Convention.

ARTICLE IV.

The Contracting Governments agree to maintain the strict wilderness reserves inviolate, as far as practicable, except for duly authorized scientific investigations or government inspection, or such uses as are consistent with the purposes for which the area was established.

ARTICLE V.

1. The Contracting Governments agree to adopt, or to propose such adoption to their respective appropriate law-making bodies,

suitable laws and regulations for the protection and preservation of flora and fauna within their national boundaries, but not included in the national parks, national reserves, nature monuments, or strict wilderness reserves referred to in Article II hereof. Such regulations shall contain proper provisions for the taking of specimens of flora and fauna for scientific study and investigation by properly accredited individuals and agencies.

2. The Contracting Governments agree to adopt, or to recommend that their respective legislatures adopt, laws which will assure the protection and preservation of the natural scenery, striking geological formations, and regions and natural objects of aesthetic interest or historic or scientific value.

ARTICLE VI.

The Contracting Governments agree to cooperate among themselves in promoting the objectives of the present Convention. To this end they will lend proper assistance, consistent with national laws, to scientists of the American Republics engaged in research and field study; they may, when circumstances warrant, enter into agreements with one another or with scientific institutions of the Americas in order to increase the effectiveness of this collaboration; and they shall make available to all the American Republics equally through publication or otherwise the scientific knowledge resulting from such cooperative effort.

ARTICLE VII.

The Contracting Governments shall adopt appropriate measures for the protection of migratory birds of economic or aesthetic value or to prevent the threatened extinction of any given species. Adequate measures shall be adopted which will permit, in so far as the respective governments may see fit, a rational utilization of migratory birds for the purpose of sports as well as for food, commerce, and industry, and for scientific study and investigation.

ARTICLE VIII.

The protection of the species mentioned in the Annex to the present Convention, is declared to be of special urgency and importance. Species included therein shall be protected as completely as possible, and their hunting, killing, capturing or taking, shall be

allowed only with the permission of the appropriate government authorities in the country. Such permission shall be granted only under special circumstances, in order to further scientific purposes, or when essential for the administration of the area in which the animal or plant is found.

ARTICLE IX.

Each Contracting Government shall take the necessary measures to control and regulate the importation, exportation and transit of protected fauna or flora or any part thereof by the following means :

1. The issuing of certificates authorizing the exportation or transit of protected species of flora or fauna, or parts thereof.
2. The prohibition of the importation of any species of fauna or flora or any part thereof protected by the country of origin unless accompanied by a certificate of lawful exportation as provided for in Paragraph I of this article.

ARTICLE X.

1. The terms of this Convention shall in no way be interpreted as replacing international agreements previously entered into by one or more of the High Contracting Powers.
2. The Pan American Union shall notify the Contracting Parties of any information relevant to the purposes of the present Convention communicated to it by any national museums or by any organizations, national or international, established within their jurisdiction and interested in the purposes of the Convention.

ARTICLE XI.

1. The original of the present Convention in Spanish, English, Portuguese and French shall be deposited with the Pan American Union and opened for signature by the American Governments on October 12, 1940.
2. The present Convention shall remain open for signature by the American Governments. The instruments of ratification shall be deposited with the Pan American Union, which shall notify their receipt and the dates thereof, and the terms of any accompanying declarations or reservations, to all participating Governments.

3. The present Convention shall come into force three months after the deposit of not less than five ratifications with the Pan American Union.

4. Any ratification received after the date of the entry into force of the Convention, shall take effect three months after the date of its deposit with the Pan American Union.

ARTICLE XII.

1. Any Contracting Government may at any time denounce the present Convention by a notification in writing addressed to the Pan American Union. Such denunciation shall take effect one year after the date of the receipt of the notification by the Pan American Union, provided, however, that no denunciation shall take effect until the expiration of five years from the date of the entry into force of this Convention.

2. If, as the result of simultaneous or successive denunciations, the number of Contracting Governments is reduced to less than three, the Convention shall cease to be in force from the date on which the last of such denunciations takes effect in accordance with the provisions of the preceding Paragraph.

3. The Pan American Union shall notify all of the American Governments of any denunciations and the date on which they take effect.

4. Should the Convention cease to be in force under the provisions of Paragraph 2 of this article, the Pan American Union shall notify all of the American Governments, indicating the date on which this will become effective.

APPENDIX III

CONVENTION BETWEEN THE UNITED STATES OF AMERICA AND GREAT
BRITAIN—PROTECTION OF MIGRATORY BIRDS
AUGUST 16, 1916. USTS 628

ARTICLE I.

The High Contracting Powers declare that the migratory birds included in the terms of this Convention shall be as follows:

(1) Migratory Game Birds:

- (a) Anatidae or waterfowl, including brant, wild ducks, geese, and swans.
 - (b) Gruidae or cranes, including little brown, sandhill, and whooping cranes.
 - (c) Rallidae or rails, including coots, gallinules and sora and other rails.
 - (d) Limicolae or shorebirds, including avocets, curlew, dowitchers, godwits, knots, oyster catchers, phalaropes, plovers, sandpipers, snipe, stilts, surf birds, turnstones, willet, woodcock, and yellowlegs.
 - (e) Columbidae or pigeons, including doves and wild pigeons.
- (2) Migratory Insectivorous Birds:
Bobolinks, catbirds, chickadees, cuckoos, flickers, flycatchers, grosbeaks, humming birds, kinglets, martins, meadowlarks, nighthawks or bull bats, nuthatches, orioles, robins, shrikes, swallows, swifts, tanagers, titmice, thrushes, vireos, warblers, wax-wings, whippoorwills, woodpeckers, and wrens, and all other perching birds which feed entirely or chiefly on insects.
- (3) Other Migratory Nongame Birds:
Auks, auklets, bitterns, fulmars, gannets, grebes, guillemots, gulls, herons, jaegers, loons, murre, petrels, puffins, shearwaters, and terns.

ARTICLE II.

The High Contracting Powers agree that, as an effective means of preserving migratory birds there shall be established the following close seasons during which no hunting shall be done except for scientific or propagating purposes under permits issued by proper authorities.

1. The close season on migratory game birds shall be between March 10th and September 1, except that the close season on the Limicolae or shorebirds in the Maritime Provinces of Canada and in those States of the United States bordering on the Atlantic Ocean which are situated wholly or in part north of Chesapeake Bay shall be between February 1 and August 15, and that Indians may take at any time scoters for food but not for sale. The season for hunting shall be further restricted to such period not exceeding three and one-half months as the High Contracting Powers may severally deem appropriate and define by law or regulation.

2. The close season on migratory insectivorous birds shall continue throughout the year.

3. The close season on other migratory nongame birds shall continue throughout the year, except that Eskimos and Indians may take at any season auks, auklets, guillemots, murres, and puffins, and their eggs, for food and their skins for clothing, but the birds and eggs so taken shall not be sold or offered for sale.

ARTICLE III.

The High Contracting Powers agree that during the period of ten years next following the going into effect of this Convention, there shall be a continuous close season on the following migratory game birds, to wit:

Band-tailed pigeons, little brown, sandhill, and whooping cranes, swans, curlew, and all shorebirds (except the blackbreasted and golden plover, Wilson or jack snipe, woodcock, and the greater and lesser yellowlegs); provided that during such ten years the close seasons on cranes, swans, and curlew in the Province of British Columbia shall be made by the proper authorities of that Province, within the general dates and limitations elsewhere prescribed in this Convention for the respective groups to which these birds belong.

ARTICLE V.

The taking of nests or eggs of migratory game or insectivorous or nongame birds shall be prohibited, except for scientific or propagating purposes under such laws or regulations as the High Contracting Powers may severally deem appropriate.

ARTICLE VI.

The High Contracting Powers agree that the shipment or export of migratory birds or their eggs from any State or Province, during the continuance of the close season in such State or Province, shall be prohibited, except for scientific or propagating purposes, and the international traffic in any birds or eggs at such time captured, killed, taken, or shipped at any time, contrary to the laws of the State or Province in which the same were captured, killed, taken, or shipped shall be likewise prohibited. Every package con-

taining migratory birds or any parts thereof, or any eggs of migratory birds transported, or offered for transportation from the United States into the Dominion of Canada or from the Dominion of Canada into the United States, shall have the name and address of the shipper and an accurate statement of the contents clearly marked on the outside of such package.

ARTICLE VII.

Permits to kill any of the above-named birds, which under extraordinary conditions, may become seriously injurious to the agricultural or other interests in any particular community, may be issued by the proper authorities of the High Contracting Powers under suitable regulations prescribed therefor by them respectively, but such permits shall lapse, or may be cancelled, at any time when, in the opinion of said authorities, the particular exigency has passed, and no birds killed under this article shall be shipped, sold, or offered for sale.

ARTICLE VIII.

The High Contracting Powers agree themselves to take, or propose to their respective appropriate law-making bodies, the necessary measures for insuring the execution of the present Convention.

ARTICLE IX.

The present Convention shall be ratified by the President of the United States of America, by and with the advice and consent of the Senate thereof and by His Britannic Majesty. The ratifications shall be exchanged at Washington as soon as possible and the Convention shall take effect on the date of the exchange of the ratifications. It shall remain in force for fifteen years and in the event of neither of the High Contracting Powers having given notification twelve months before the expiration of said period of fifteen years, of its intention of terminating its operation, the Convention shall continue to remain in force for one year and so on from year to year.

In faith whereof, the respective Plenipotentiaries have signed the present Convention in duplicate and have hereunto affixed their seals.

APPENDIX IV

CONVENTION BETWEEN THE UNITED STATES OF AMERICA AND MEXICO—PROTECTION OF MIGRATORY BIRDS AND GAME MAMMALS
FEBRUARY 7, 1936, USTS 912

Whereas, some of the birds denominated migratory, in their movements cross the United States of America and the United Mexican States, in which countries they live temporarily;

Whereas it is right and proper to protect the said migratory birds, whatever may be their origin, in the United States of America and the United Mexican States, in order that the species may not be exterminated;

Whereas, for this purpose it is necessary to employ adequate measures which will permit a rational utilization of migratory birds for the purposes of sport as well as for food, commerce and industry;

The Governments of the two countries have agreed to conclude a Convention which will satisfy the above mentioned need and to that end have appointed as their respective plenipotentiaries: The Honorable Josephus Daniels representing the President of the United States of America, Franklin D. Roosevelt and the Honorable Eduardo Hay, representing the President of the United Mexican States, General Lázaro Cárdenas, who, having exhibited to each other and found satisfactory their respective full powers, conclude the following Convention:

ARTICLE I.

In order that the species may not be exterminated, the high contracting parties declare that it is right and proper to protect birds denominated as migratory, whatever may be their origin, which in their movements live temporarily in the United States of America and the United Mexican States, by means of adequate methods which will permit, in so far as the respective high contracting parties may see fit, the utilization of said birds rationally for purposes of sport, food, commerce and industry.

ARTICLE II.

The high contracting parties agree to establish laws, regulations and provisions to satisfy the need set forth in the preceding Article, including:

A)—The establishment of close seasons, which will prohibit in certain periods of the year the taking of migratory birds, their nests or eggs, as well as their transportation or sale, alive or dead, their products or parts, except when proceeding, with appropriate authorization, from private game farms or when used for scientific purposes, for propagation or for museums.

B)—The establishment of refuge zones in which the taking of such birds will be prohibited.

C)—The limitation of their hunting to four months in each year, as a maximum, under permits issued by the respective authorities in each case.

D)—The establishment of a close season for wild ducks from the tenth of March to the first of September.

E)—The prohibition of the killing of migratory insectivorous birds, except when they become injurious to agriculture and constitute plagues, as well as when they come from reserves or game farms: provided, however, that such birds may be captured alive and used in conformity with the laws of each contracting country.

F)—The prohibition of hunting from aircraft.

ARTICLE III.

The high contracting parties respectively agree, in addition, not to permit the transportation over the American-Mexican border of migratory birds, dead or alive, their parts or products, without a permit of authorization provided for that purpose by the government of each country, with the understanding that in the case that the said birds, their parts or products are transported from one country to the other without the stipulated authorization, they will be considered as contraband and treated accordingly.

ARTICLE IV.

The high contracting parties declare that for the purposes of the present Convention the following birds shall be considered migratory:

Migratory Game Birds

Family Anatidae

Family Gruidae

Family Rallidae

Family Charadriidae
Family Scolopacidae
Family Recurvirostridae
Family Phalaropodidae
Family Columbidae

Migratory Non-Game Birds

Family Cuculidae
Family Caprimulgidae
Family Micropodidae
Family Trochilidae
Family Picidae
Family Tyrannidae
Family Alaudidae
Family Hirundinidae
Family Paridae
Family Certhiidae
Family Troglodytidae
Family Turdidae
Family Mimidae
Family Sylviidae
Family Motacillidae
Family Bombycillidae
Family Ptiligonatidae
Family Vireonidae
Family Compothlypidae
Family Icteridae
Family Thraupidae
Family Fringillidae

Others which the Presidents of the United States of America and the United Mexican States may determine by common agreement.

ARTICLE V.

The high contracting parties agree to apply the stipulations set forth in Article III with respect to the game mammals which live in their respective countries.

ARTICLE VI.

This Convention shall be ratified by the high contracting parties in accordance with their constitutional methods and shall remain in force for fifteen years and shall be understood to be extended from year to year if the high contracting parties have not indicated twelve months in advance their intention to terminate it.

The respective plenipotentiaries sign the present Convention in duplicate in English and Spanish, affixing thereto their respective seals, in the City of Mexico, the seventh day of February of 1936.

APPENDIX V

CONVENTION INTERNATIONALE CONCERNANT LA CONSERVATION
DES OISEAUX UTILES A L'AGRICULTURE

(Paris, March 19, 1902) 30 Nouv. Rec. 2me 686.

(Les Parties) reconnaissant l'opportunité d'une action commune dans les différents pays pour la conservation des oiseaux utiles à l'agriculture, ont résolu de conclure une convention à cet effet et ont nommé pour leurs plénipotentiaires, savoir, &c

lesquels, après s'être communiqué leurs pleins pouvoirs, trouvés en bonne et due forme, sont convenus des articles suivants :

I. Les oiseaux utiles à l'agriculture, spécialement les insectivores et notamment les oiseaux énumérés dans la liste no. 1 annexée la présente convention laquelle sera susceptible d'addition par la législature de chaque pays, jouiront d'une protection absolue, de façon qu'il soit interdit de les tuer en tout temps et de quelque manière que se soit, d'en détruire les nids, oeufs, et couvées.

En attendant que ce resultat soit atteint partout dans son ensemble, les Hautes Parties Contractantes s'engagent à prendre ou à proposer à leurs législatures respectives les dispositions nécessaires pour assurer l'exécution des mesures comprises dans les articles ci après.

II. Il sera défendu d'enlever les nids, de prendre les oeufs, de capturer et de détruire les couvées en tout temps et par les moyens quelconques.

L'importation et le transit, le transport, le colportage, la mise en vente et l'achat de ces nids, oeufs, et couvées, seront interdits.

Cette interdiction ne s'étendra pas à la destruction par le propriétaire, usufruitier, ou leur mandataire des nids, que des oiseaux ont construits dans ou contre les maisons d'habitation ou les bâtiments en général et dans l'intérieur des cours. Il pourra de plus être dérogé, à titre exceptionnel, aux dispositions du présent article, en ce qui concerne les oeufs de vanneau et de mouette.

III. Seront prohibés la pose et l'emploi des pièges, cages, filets, lacets, gluaux, et de tous autres moyens quelconques ayant pour objet de faciliter la capture ou la destruction en masse des oiseaux.

IV. Dans le cas où les Hautes Parties Contractantes ne se trouveraient pas en mesure d'appliquer immédiatement et dans leur intégralité les dispositions prohibitives de l'article qui précède, elles pourront apporter des atténuations jugées nécessaires aux dites prohibitions, mais elles engagent à restreindre l'emploi des méthodes, engins, et moyens de capture et de destruction, de façon de parvenir à réaliser peu à peu les mesures de protection mentionnées dans l'article trois.

V. Outre les défenses générales formulées à l'article trois, il est interdit de prendre ou de tuer, du premier mars au quinze septembre de chaque année, les oiseaux utiles énumérés dans la liste numéro 1 annexée à la convention.

La vente et la mise en vente en seront interdites également dans la même période.

Les Hautes Parties Contractantes s'engagent dans la mesure où leur législation le permet, à prohiber l'entrée et le transit des dits oiseaux et leur transport du 1^{er} mars au 15 septembre.

La durée de l'interdiction prévue le présent article pourra, toutefois, être modifiée dans les pays septentrionaux.

VI. Les autorités compétentes pourront accorder exceptionnellement aux propriétaires ou exploitants de vignobles, vergers, et jardins, des pépinières, des champs plantés ou ensemencés, ainsi qu'aux agents préposés à leur surveillance, le droit temporaire de tirer à l'arme à feu sur les oiseaux dont la présence serait nuisible et causerait un réel dommage.

Il restera toutefois interdit de mettre en vente, et de vendre les oiseaux tués dans ces conditions.

VII. Des exceptions aux dispositions de cette convention pourront être accordées dans un intérêt scientifique ou de repeuplement par les autorités compétentes, suivant les cas et en prenant toutes les précautions nécessaires pour éviter les abus.

Pourront encore être permises, avec les mêmes conditions de précaution, la capture, la vente, et la détention des oiseaux destinés à être tenues en cage. Les permissions doivent être accordées par les autorités compétentes.

VIII. Les dispositions de la présente convention ne seront pas applicables aux oiseaux de basse-cour, ainsi qu'aux oiseaux gibier existant dans les chasses réservées et désignées comme tels par la législature du pays.

Partout ailleurs la destruction des oiseaux gibiers ne sera autorisée qu'au des armes à feu et à des époques déterminées par la loi.

Les états contractants sont invités à interdire la vente, le transport, et le transit des oiseaux gibiers dont la chasse est défendue sur leur territoire, durant la période de cette interdiction.

IX. Chacune des Parties Contractantes pourra faire des exceptions aux dispositions de la présente convention, 10, pour les oiseaux que la législation du pays permet de tirer ou de tuer comme nuisibles à la chasse ou à la pêche; 20, pour les oiseaux que la législation du pays aura désignés comme nuisibles à l'agriculture locale.

A défaut d'une liste officielle dressé par la législation du pays, le 20 du présent article sera appliqué aux oiseaux désignés dans la liste no. 2 annexée à la présent convention.

X. Les Hautes Parties Contractantes prendront les mesures propres à mettre leur législation en accord avec les dispositions de la présente convention dans un délai de trois ans à partir du jour de la signature de la convention.

XI. Les Hautes Parties Contractantes se communiqueront, par l'intermédiaire du Gouvernement Français, les lois et les décisions administratives qui auraient été déjà rendues ou qui viendraient de l'être dans leurs états, relativement à l'objet de la présent convention.

XII. Lorsque cela sera jugé nécessaire, les Hautes Parties Contractantes se feront représenter à une réunion internationale chargée d'examiner les questions qui soulève l'exécution de la convention et de proposer les modifications dont l'expérience aura démontré l'utilité.

XIII. Les états qui n'ont pas pris part à la présente convention sont admis à y adhérer sur leur demande. Cette adhésion sera notifiée par la voie diplomatique au Gouvernement de la République Française, et par celui-ci aux autres gouvernements signataires.

XIV. La présente convention sera mise en vigueur dans un délai maximum d'un an à dater du jour de l'échange des ratifications.

Elle restera en vigueur indéfiniment entre toutes les Puissances signataires. Dans le cas où l'une d'elles dénoncerait la convention, cette dénonciation n'aurait d'effet qu'à son égard et seulement une année après le jour où cette dénonciation aura été notifiée aux autres états contractantes.

XV. La présente convention sera ratifiée, et les ratifications seront échangées à Paris dans le plus bref délai possible.

XVI. La disposition du 2^{me} alinéa de l'article 8 de la présente convention pourra exceptionnellement ne pas être appliquée dans les provinces septentrionales de la Suède, en raison des conditions climatologiques toutes spéciales où elles se trouvent.

En foi de quoi, les Plénipotentiaires respectifs l'ont signée y ont apposé leurs cachets. Fait à Paris le 19 mars 1902.

(signatures)

LISTE NO. I.

1. Oiseaux utiles. Rapaces Nocturnes: Chevêches (Athene) et chevêchettes (Glaucidium), Chouettes (Surnia), hulottes ou chats-huants (Syrnium), effraie commune (Strix flammea L), hiboux brachyotte et moyen-duc (Otus), scops d'aldrivande ou petit duc (Scops giu Scop).

Grimpeurs: pics (Picus, Gecinus, &c), toutes les espèces.

Syndactyles: rolhier ordinaire (Coracias garrula L), guépriers (Merops).

Passereaux ordinaires : huppe vulgaire (*Upupa epops*), grimpeaux, tichodromes, et sitelles (*Certhia*, *Tichodroma*, *Sitta*), martinets (*Cypselus*), engoulevents (*Caprimulgus*), rossignols (*Luscinia*), gorges-bleues (*Cyanecula*), rouges-queues (*Ruticilla*), rouges-gorges (*Rubecula*), traquets (*Pratincola* & *Saxicola*), accekteurs (*Accentor*), fauvettes de toute sorte, telle que : fauvette ordinaire (*Sylvia*), fauvettes babillardes (*Curruca*) & icterines (*Hypolais*), fauvettes aquatiques, rousseroles, phragmites, locustelles (*Acrocephalus*, *Calamodyta*, *Locustella*) &c., fauvettes cisticoles (*Cisticola*), pouillots (*Phylloscopus*), roitelets (*Regulus*) et troglodytes (*Troglodytes*), mésanges de toutes espèces (*Parus*, *Panurus*, *Orites*, &c), gobe-mouches (*Muscicapa*), hirondelles de toutes espèces (*Hirundo*, *Chelidon*, *Cotyle*), lavandières et bergeronnettes (*Motacilla*, *Budytes*), pipits (*Anthus*, *Corydale*), bec-croisés (*Loxia*), venturons et serins (*Citrinella* & *Serinus*), char-donnerets et tarins (*Carduelis* & *Chrysomitris*), étourneaux ordinaires et martins (*Sturnus*, *Pastor* &c).

Echassiers : cigognes blanches et noires (*Ciconia*).

LISTE NO. 2.

Oiseaux nuisibles. Rapaces diurnes : gypaète barbu (*Gypaëtus barbatus* L), aigles, (*Aquila chrysaëtus*), toutes les espèces, pygargues (*Haliaëtus*) toutes les espèces, balbusards fluviatiles (*Pandion haliaëtus*), milans, élanions, et nauciers (*Milvus*, *Elanus*, *Nauclerus*) toutes les espèces, faucons : gerfauts, pèlerins, hobereaux, émerillons (*Falco*) toutes les espèces à l'exception des faucons kobez, cresserelle, et cresserine, autour ordinaire (*Astur palumbarius* L), épervier (*Accipiter*), busards (*Circus*).

Rapaces nocturnes : grand-duc vulgaire (*Bubo maximus* Fl).

Passereaux ordinaires : grand corbeau (*Corvus corax*), pie voleuse (*Pica rustica* Scop), geai glandivore (*Garrulus glandarius* L).

Echassiers : herons, cendré et pourpré (*Ardea*), butors (*Phalacrocorax* ou *Graculus*), harles (*Mergus*), plongeurs (*Colymbus*).

APPENDIX VI

CONVENTION BETWEEN THE UNITED STATES AND OTHER POWERS
PROVIDING FOR THE PRESERVATION AND PROTECTION OF
FUR SEALS, JULY 7, 1911, USTS 564

ARTICLE I.

The High Contracting Parties mutually and reciprocally agree that their citizens and subjects respectively, and all persons subject to their laws and treaties, and their vessels, shall be prohibited, while this Convention remains in force, from engaging in pelagic sealing in the waters of the North Pacific Ocean, north of the thirtieth parallel of north latitude and including the Seas of Bering, Kamchatka, Okhotsk and Japan, and that every such person and vessel offending against such prohibition may be seized, except within the territorial jurisdiction of one of the other powers, and detained by the naval or other duly commissioned officers of any of the Parties to this Convention, to be delivered as soon as practicable to an authorized official of their own nation at the nearest point to the place of seizure, or elsewhere as may be mutually agreed upon; and that the authorities of the nation to which such person or vessel belongs alone shall have jurisdiction to try the offense and impose the penalties for the same; and that the witnesses and proofs necessary to establish the offense, so far as they are under the control of any of the Parties to this Convention, shall also be furnished with all reasonable promptitude to the proper authorities having jurisdiction to try the offense.

ARTICLE II.

Each of the High Contracting Parties further agrees that no person or vessel shall be permitted to use any of its ports or harbors or any part of its territory for any purposes whatsoever connected with the operations of pelagic sealing in the waters within the protected area mentioned in Article I.

ARTICLE III.

Each of the High Contracting Parties further agrees that no sealskins taken in the waters of the North Pacific Ocean within

the protected area mentioned in Article I, and no sealskins identified as the species known as *Callorhinus alascanus*, *Callorhinus ursinus*, and *Callorhinus kurilensis*, and belonging to the American, Russian, or Japanese herds, except such as are taken under the authority of the respective Powers to which the breeding grounds of such herds belong and have been officially marked and certified as having been so taken, shall be permitted to be imported or brought into the territory of any of the Parties to this Convention.

ARTICLE IV.

It is further agreed that the provisions of this Convention shall not apply to Indians, Ainos, Aleuts, or other aborigines dwelling on the coast of the waters mentioned in Article I, who carry on pelagic sealing in canoes not transported by or used in connection with other vessels, and propelled entirely by oars, paddles, or sails, and manned by not more than five persons each, in the way hitherto practiced and without the use of firearms; provided that such aborigines are not in the employment of other persons or under contract to deliver the skins to any person.

ARTICLE V.

Each of the High Contracting Parties agrees that it will not permit its citizens or subjects or their vessels to kill, capture, or pursue beyond the distance of three miles from the shore line of its territories sea otters in any part of the waters mentioned in Article I of this Convention.

ARTICLE VI.

Each of the High Contracting Parties agrees to enact and enforce such legislation as may be necessary to make effective the foregoing provisions with appropriate penalties for violations thereof.

ARTICLE VII.

It is agreed on the part of the United States, Japan and Russia that each respectively will maintain a guard or patrol in the waters frequented by the seal herd in the protection of which it is especially interested, so far as may be necessary for the enforcement of the foregoing provisions.

ARTICLE VIII.

All of the High Contracting Parties agree to cooperate with each other in taking such measures as may be appropriate and available for the purpose of preventing pelagic sealing in the prohibited area mentioned in Article I.

ARTICLE IX.

The term pelagic sealing is hereby defined for the purposes of this Convention as meaning the killing, capturing, or pursuing in any manner whatsoever of fur seals at sea.

ARTICLE X.

The United States agrees that of the total number of sealskins taken annually under the authority of the United States upon the Pribilof Islands or any other islands or shores of the waters mentioned in Article I subject to the jurisdiction of the United States to which any seal herds hereafter resort, there shall be delivered at the Pribilof Islands at the end of each season fifteen per cent (15%) gross in number and value thereof to an authorized agent of the Canadian Government and fifteen per cent (15%) gross in number and value thereof to an authorized agent of the Japanese Government; provided, however, that nothing herein contained shall restrict the right of the United States at any time and from time to time to suspend altogether the taking of sealskins on such islands or shores subject to its jurisdiction, and to impose such restrictions and regulations upon the total number of skins to be taken in any season and the manner and times and places of taking them as may seem necessary to protect and preserve the seal herd or to increase its number.

ARTICLE XI.

The United States further agrees to pay the sum of two hundred thousand dollars (\$200,000) to Great Britain and the sum of two hundred thousand dollars (\$200,000) to Japan when this convention goes into effect, as an advance payment in each case in lieu of such number of fur-seal skins to which Great Britain and Japan respectively would be entitled under the provisions of this Convention as would be equivalent in each case to two hundred thousand

dollars (\$200,000) reckoned at their market value at London at the date of their delivery before dressing and curing and less cost of transportation from the Pribilof Islands, such market value in case of dispute to be determined by an umpire to be agreed upon by the United States and Great Britain, or by the United States and Japan, as the case may be, which skins shall be retained by the United States in satisfaction of such payments.

The United States further agrees that the British and Japanese share respectively of the sealskins taken from the American herd under the terms of this Convention shall be not less than one thousand (1,000) each in any year even if such number is more than fifteen per cent (15%) of the number to which the authorized killing is restricted in such year, unless the killing of seals in such year or years shall have been absolutely prohibited by the United States for all purposes except to supply food, clothing, and boat skins for the natives on the islands, in which case the United States agrees to pay to Great Britain and to Japan each the sum of ten thousand dollars (\$10,000) annually in lieu of any share of skins during the years when no killing is allowed; and Great Britain agrees, and Japan agrees, that after deducting the skins of their respective shares, which are to be retained by the United States as above provided to reimburse itself for the advance payment aforesaid, the United States shall be entitled to reimburse itself for any annual payments made as herein required, by retaining an additional number of sealskins from the British and Japanese shares respectively over and above the specified minimum allowance of one thousand (1000) skins in any subsequent year or years when killing is again resumed, until the whole number of skins retained shall equal, reckoned at their market value determined as above provided for, the entire amount so paid, with interest at the rate of four per cent (4%) per annum.

If, however, the total number of seals frequenting the United States islands in any year falls below one hundred thousand (100,000), enumerated by official count, then all killing, excepting the inconsiderable supply necessary for the support of the natives as above noted, may be suspended without allowance of skins or payment of money equivalent until the number of such seals again exceeds one hundred thousand (100,000), enumerated in like manner.

ARTICLE XX.

It is agreed on the part of Russia that of the total number of sealskins taken annually upon the Commander Islands, or any other islands or shores of the waters defined in Article I subject to the jurisdiction of Russia to which any seal herds hereafter resort, there shall be delivered at the Commander Islands at the end of each season fifteen per cent (15%) gross in number and value thereof to an authorized agent of the Canadian Government, and fifteen per cent (15%) gross in number and value thereof to an authorized agent of the Japanese Government; provided, however, that nothing herein contained shall restrict the right of Russia at any time and from time to time during the first five years of the term of this Convention to suspend altogether the taking of sealskins on such islands or shores subject to its jurisdiction, and to impose during the terms of this Convention such restrictions and regulations upon the total number of skins to be taken in any season, and the manner and times and places of taking them as may seem necessary to preserve and protect the Russian seal herd, or to increase its number; but it is agreed, nevertheless, on the part of Russia that during the last ten years of the term of this Convention not less than five per cent (5%) of the total number of seals on the Russian rookeries and hauling grounds will be killed annually, provided that said five per cent (5%) does not exceed eighty-five per cent (85%) of the three-year-old male seals hauling in such year.

If, however, the total number of seals frequenting the Russian islands in any year falls below eighteen thousand (18,000), enumerated by official count then the allowance of skins mentioned above and all killing of seals except such as may be necessary for the support of the natives on the islands may be suspended until the number of such seals again exceeds eighteen thousand (18,000), enumerated in the like manner.

ARTICLE XIII.

It is agreed on the part of Japan that of the total number of sealskins taken annually upon Robben Island, or any other islands or shores of the waters defined in Article I subject to the jurisdic-

tion of Japan to which any seal herds hereafter resort, there shall be delivered at Robben Island at the end of each season ten per cent (10%) gross in number and value thereof to an authorized agent of the United States Government, ten per cent (10%) gross in number and value thereof to an authorized agent of the Canadian Government, and ten per cent (10%) gross in number and value thereof to an authorized agent of the Russian Government; provided, however, that nothing herein contained shall restrict the right of Japan at any time and from time to time during the first five years of the term of this Convention to suspend altogether the taking of sealskins on such islands or shores subject to its jurisdiction, and to impose during the term of this Convention such restrictions and regulations upon the total number of skins to be taken in any season, and the manner and times and places of taking them, as may seem necessary to preserve and protect the Japanese herd, or to increase its number; but it is agreed, nevertheless, on the part of Japan that during the last ten years of the term of this Convention not less than five per cent (5%) of the total number of seals on the Japanese rookeries and hauling grounds will be killed annually, provided that said five per cent (5%) does not exceed eighty-five per cent (85%) of the three-year-old male seals hauling in such year.

If, however, the total number of seals frequenting the Japanese islands in any year falls below six thousand five hundred (6,500) enumerated by official count, then the allowance of skins mentioned above and all killing of seals except such as may be necessary for the support of the natives on the islands may be suspended until the number of such seals again exceeds six thousand five hundred (6,500), enumerated in like manner.

ARTICLE XIV.

It is agreed on the part of Great Britain that in case any seal herd hereafter resorts to any islands or shores of the waters defined in Article I subject to the jurisdiction of Great Britain, there shall be delivered at the end of each season during the term of this Convention ten per cent (10%) gross in number and value of the total number of sealskins annually taken from such herd to an

authorized agent of the United States Government, ten per cent (10%) gross in number and value of the total number of sealskins annually taken from such herd to an authorized agent of the Japanese Government, and ten per cent (10%) gross in number and value of the total number of sealskins annually taken from such herd to an authorized agent of the Russian Government.

ARTICLE XV.

It is further agreed between the United States and Great Britain that the provisions of this Convention shall supersede, in so far as they are inconsistent therewith or in duplication thereof, the provisions of the treaty relating to fur seals, entered into between the United States and Great Britain on the 7th day of February 1911.

ARTICLE XVI.

This Convention shall go into effect upon the 15th day of December 1911, and shall continue in force for a period of fifteen (15) years from that date, and thereafter until terminated by twelve (12) months' written notice given by one or more of the Parties to all of the others, which notice may be given at the expiration of fourteen years or at any time afterwards, and it is agreed that at any time prior to the termination of this convention upon the request of any one of the High Contracting Parties, a conference shall be held forthwith between representatives of all the Parties hereto, to consider and if possible agree upon a further extension of this Convention with such addition and modifications, if any, as may be found desirable.

ARTICLE XVII.

The Convention shall be ratified by the President of the United States, by and with the advice and consent of the Senate thereof, by His Britannic Majesty, by his Majesty the Emperor of Japan, and by His Majesty the Emperor of all the Russias; and ratifications shall be exchanged at Washington as soon as practicable.

In faith whereof, the respective Plenipotentiaries have signed this Convention in quadruplicate and have hereunto affixed their seals.

APPENDIX VII

CONVENTION FOR THE REGULATION OF WHALING, GENEVA,
SEPTEMBER 24, 1931, USTS 880

ARTICLE 1.

The High Contracting Parties agree to take, within the limits of their respective jurisdictions, appropriate measures to ensure the application of the provisions of the present Convention and the punishment of infractions of the said provisions.

ARTICLE 2.

The present Convention applies only to baleen or whalebone whales.

ARTICLE 3.

The present Convention does not apply to aborigines dwelling on the coasts of the territories of the High Contracting parties provided that:

- (1) They only use canoes, pirogues or other exclusively native craft propelled by oars or sails;
- (2) They do not carry firearms;
- (3) They are not in the employment of persons other than aborigines;
- (4) They are not under contract to deliver the products of their whaling to any third person.

ARTICLE 4.

The taking or killing of right whales, which shall be deemed to include North-Cape whales, Greenland whales, southern right whales, Pacific right whales and southern pigmy right whales, is prohibited.

ARTICLE 5.

The taking or killing of calves or suckling whales, immature whales, and female whales which are accompanied by calves (or suckling whales) is prohibited.

ARTICLE 6.

The fullest possible use shall be made of the carcasses of whales taken. In particular :

1. There shall be extracted by boiling or otherwise, the oil from all blubber and from the head and the tongue and, in addition, from the tail as far forward as the outer opening of the lower intestine.

The provisions of this sub-paragraph shall apply only to such carcasses or parts of carcasses as are not intended to be used for human food.

2. Every factory, whether on shore or afloat, used for treating the carcasses of whales shall be equipped with adequate apparatus for the extraction of oil from the blubber, flesh and bones.

3. In the case of whales brought on shore, adequate arrangements shall be made for utilizing the residues after the oil has been extracted.

ARTICLE 7.

Gunners and crews of whaling vessels shall be engaged on terms such that their remuneration shall depend to a considerable extent upon such factors as the size, species, value and yield of oil of whales taken, and not merely upon the number of whales taken, in so far as payment is made dependent on results.

ARTICLE 8.

No vessel of any of the High Contracting Parties shall engage in taking or treating whales unless a license authorizing such vessel to engage therein shall have been granted in respect of such vessel by the High Contracting Party, whose flag she flies, or unless her owner or charterer has notified the Government of the said High Contracting Party of his intention to employ her in whaling and has received a certificate of notification from the said Government.

Nothing in this article shall prejudice the right of any High Contracting Party to require that, in addition, a license shall be required from his own authorities by every vessel desirous of using his territory or territorial waters for the purposes of taking, landing or treating whales, and such license may be refused or may be made

subject to such conditions as may be deemed by such High Contracting Party to be necessary or desirable, whatever the nationality of the vessel may be.

ARTICLE 9.

1. The geographical limits within which the articles of this Convention are to be applied shall include all the waters of the world, including both the high seas and territorial and national waters.

ARTICLE 10.

1. The High Contracting Parties shall obtain, with regard to the vessels flying their flags and engaged in the taking of whales, the most complete biological information practicable with regard to each whale taken, and in any case on the following points:

- (a) Date of taking;
- (b) Place of taking;
- (c) Species;
- (d) Sex;
- (e) Length; measured, when taken out of water; estimated, if cut up in water;
- (f) When foetus is present, length and sex if ascertainable;
- (g) When practicable, information as to stomach contents.

2. The length referred to in sub-paragraphs (e) and (f) of this article shall be the length of a straight line taken from the tip of the snout to the notch between the flukes of the tail.

ARTICLE 11.

Each High Contracting Party shall obtain from all factories, on land or afloat, under his jurisdiction, returns of the number of whales of each species treated at each factory and of the amounts of oil of each grade and the quantities of meal, guano and other products derived from them.

ARTICLE 12.

Each of the High Contracting Parties shall communicate statistical information regarding all whaling operations under their jurisdiction to the International Bureau for Whaling Statistics at

Oslo. The information given shall comprise at least the particulars mentioned in Article 10 and: (1) the name and tonnage of each floating factory; (2) the number and aggregate tonnage of the whale catchers; (3) a list of the land stations which were in operation during the period concerned. Such information shall be given at convenient intervals not longer than one year.

ARTICLE 13.

The obligation of a High Contracting Party to take measures to ensure the observance of the conditions of the present Convention in his territories and territorial waters, and by his vessels, shall not apply to those of his territories to which the Convention does not apply, and the territorial waters adjacent thereto, or to vessels registered in such territories.

ARTICLE 14.

The present Convention, the French and English texts of which shall both be authoritative, shall remain open until the thirty-first of March 1932 for signature on behalf of any Member of the League of Nations or of any non-member State.

ARTICLE 15.

The present Convention shall be ratified. The instruments of ratification shall be deposited with the Secretary-General of the League of Nations, who shall notify their receipt to all Members of the League of Nations and non-member States indicating the dates of their deposit.

ARTICLE 16.

As from the first of April 1932, any Member of the League of Nations and any non-member State, on whose behalf the Convention has not been signed before that date, may accede thereto.

The instruments of accession shall be deposited with the Secretary-General of the League of Nations, who shall notify all the Members of the League of Nations and non-member States of their deposit and the date thereof.

ARTICLE 17.

The present Convention shall enter into force on the ninetieth day following the receipt by the Secretary-General of the League of Nations of ratifications or accessions on behalf of not less than eight Members of the League or non-member states, including the Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland.

As regards any Member of the League or non-member State on whose behalf an instrument of ratification or accession is subsequently deposited, the Convention shall enter into force on the ninetieth day after the date of the deposit of such instrument.

ARTICLE 18.

If after the coming into force of the present Convention the Council of the League of Nations, at the request of any two Members of the League or non-member States with regard to which the Convention is then in force, shall convene a Conference for the revision of the Convention, the High Contracting Parties agree to be represented at any Conference so convened.

ARTICLE 19.

1. The present Convention may be denounced after the expiration of three years from the date of its coming into force.

2. Denunciation shall be effected by a written notification addressed to the Secretary-General of the League of Nations, who shall inform all the Members of the League and the non-member States of each notification received and of the date of its receipt.

3. Each denunciation shall take effect six months after the receipt of its notification.

ARTICLE 20.

1. Any High Contracting Party may, at the time of signature, ratification or accession, declare that, in accepting the present Convention, he does not assume any obligations in respect of all or any of his colonies, protectorates, overseas territories, or territories under suzerainty or mandate; and the present Convention shall not apply to any territories named in such declaration.

2. Any High Contracting Party may give notice to the Secretary-General of the League of Nations at any time subsequently that he desires that the Convention shall apply to all or any of his territories which have been made the subject of a declaration under the preceding paragraph, and the Convention shall apply to all the territories named in such notice ninety days after its receipt by the Secretary-General of the League of Nations.

3. Any High Contracting Party may, at any time after the expiration of the period of three years mentioned in Article 19, declare that he desires that the present Convention shall cease to apply to all or any of his colonies, protectorates, overseas territories or territories under suzerainty or mandate and the Convention shall cease to apply to the territories named in such declaration six months after its receipt by the Secretary-General of the League of Nations.

4. The Secretary-General of the League of Nations shall communicate to all the Members of the League of Nations and the non-member States all declarations and notices received in virtue of this article and the dates of their receipt.

ARTICLE 21.

The present Convention shall be registered by the Secretary-General of the League of Nations as soon as it has entered into force.

In faith whereof the above-mentioned Plenipotentiaries have signed the present Convention.

APPENDIX VIII

AGREEMENT BETWEEN THE UNITED STATES AND OTHER POWERS

LONDON, JUNE 8, 1937, USTS 933

Regulation of Whaling

The Governments of the Union of South Africa, the United States of America, the Argentine Republic, the Commonwealth of Australia, Germany, the United Kingdom of Great Britain and Northern Ireland, the Irish Free State, New Zealand and Norway, desiring to secure the prosperity of the whaling industry and, for that purpose, to maintain the stock of whales, have agreed as follows:

ARTICLE 1.

The contracting Governments will take appropriate measures to ensure the application of the provisions of the present Agreement and the punishment of infractions against the said provisions, and, in particular, will maintain at least one inspector of whaling on each factory ship under their jurisdiction. The inspectors shall be appointed and paid by Governments.

ARTICLE 2.

The present Agreement applies to factory ships and whale catchers and to land stations as defined in Article 18 under the jurisdiction of the contracting Governments, and to all waters in which whaling is prosecuted by such factory ships and/or whale catchers.

ARTICLE 3.

Prosecutions for infractions against or contraventions of the present Agreement and the regulations made thereunder shall be instituted by the Government or a Department of the Government.

ARTICLE 4.

It is forbidden to take or kill Grey Whales and/or Right Whales.

ARTICLE 5.

It is forbidden to take or kill any Blue, Fin, Humpback or Sperm whales below the following lengths, viz.:

| | | |
|---------------------|-----------|---------|
| (a) Blue whales | | 70 feet |
| (b) Fin whales | | 55 feet |
| (c) Humpback whales | | 35 feet |
| (d) Sperm whales | | 35 feet |

ARTICLE 6.

It is forbidden to take or kill calves, or suckling whales or female whales which are accompanied by calves or suckling whales.

ARTICLE 7.

It is forbidden to use a factory ship or a whale catcher attached thereto for the purpose of taking or treating baleen whales in any

waters south of 40° South Latitude, except during the period from the 8th Day of December to the 7th Day of March following, both days inclusive, provided that in the whaling season 1937-38 the period shall extend to the 15th of March, 1938, inclusive.

ARTICLE 8.

It is forbidden to use a land station or a whale catcher attached thereto for the purpose of taking or treating whales in any area or in any waters for more than six months in any period of twelve months, such period of six months to be continuous.

ARTICLE 9.

It is forbidden to use a factory ship or a whale catcher attached thereto for the purpose of taking or treating baleen whales in any of the following areas, viz :

- (a) in the Atlantic Ocean north of 40° South Latitude and in the Davis Strait, Baffin Bay and Greenland Sea ;
- (b) in the Pacific Ocean east of 150° West Longitude between 40° South Latitude and 35° North Latitude ;
- (c) in the Pacific Ocean west of 150° West Longitude between 40° South Latitude and 20° North Latitude ;
- (d) in the Indian Ocean north of 40° South Latitude.

ARTICLE 10.

Notwithstanding anything contained in this Agreement, any contracting Government may grant to any of its nationals a special permit authorizing that national to kill, take and treat whales for purposes of scientific research subject to such restrictions as to number and subject to such other conditions as the contracting Government thinks fit, and the killing, taking and treating of whales in accordance with the terms in force under this article shall be exempt from the operation of this Agreement,

Any contracting Government may at any time revoke a permit granted by it under this article.

ARTICLE 11.

The fullest possible use shall be made of all whales taken. Except in the case of whales or parts of whales intended for human food or

for feeding animals, the oil shall be extracted by boiling or otherwise from blubber, meat (except the meat of sperm whales) and bones other than the internal organs, whale bone and flippers, of all whales delivered to the factory ship or land station.

ARTICLE 12.

There shall not at any time be taken for delivery to any factory ship or land station a greater number of whales than can be treated efficiently and in accordance with article 11 of the present Agreement by the plant and personnel therein within a period of thirty-six hours from the time of the killing of each whale.

ARTICLE 13.

Gunners and crews of factory ships, land stations and whale catchers shall be engaged on terms such that their remuneration shall depend to a considerable extent upon such factors as the species, size and yield of whales taken, and not merely upon the number of whales taken, and no bonus or other remuneration calculated by reference to the results of their works, shall be paid to the gunners and crews of whale catchers in respect of any whales the taking of which is forbidden by this Agreement.

ARTICLE 14.

With a view to the enforcement of the preceding article, each contracting Government shall obtain, in respect of every whale catcher under its jurisdiction, an account showing the total emolument of each gunner and member of the crew and the manner in which the emolument of each of them is calculated.

ARTICLE 15.

Articles 5, 9, 13 and 14 of the present Agreement, in so far as they impose obligations not already in force, shall not until the 1st day of December, 1937, apply to factory ships, land stations or catchers attached thereto which are at present operating or which have already taken practical measures with a view to whaling operations during the period before the said date. In respect of such factory ships, land stations and whale catchers, the Agreement shall in any event come into force on the said date.

ARTICLE 16.

The contracting Governments shall obtain with regard to all factory ships and land stations under their jurisdiction records of the number of whales of each species treated at each factory ship or land station and as to the aggregate amounts of oil of each grade and quantities of meal, guano and other products derived from them, together with particulars with respect to each whale treated in the factory ship or land station as to the date and place of taking, the species and sex of the whale, its length and, if it contains a foetus, the length and sex, if ascertainable, of the foetus.

ARTICLE 17.

The contracting Governments shall, with regard to all whaling operations under their jurisdiction, communicate to the International Bureau for Whaling Statistics at Sandefjord in Norway the statistical information specified in Article 16 of the present Agreement together with any information which may be collected or obtained by them in regard to the calving grounds and migration routes of whales.

In communicating this information the Governments shall specify:

- (a) the name and tonnage of each factory ship;
- (b) the number and aggregate tonnage of the whale catchers;
- (c) a list of the land stations which were in operation during the period concerned.

ARTICLE 18.

In the present Agreement the following expressions have the meanings respectively assigned to them, that is to say:

“factory ship” means a ship in which or on which whales are treated whether wholly or in part;

“whale catcher” means a ship used for the purpose of hunting, taking, towing, holding on to, or scouting for whales;

“land station” means a factory on the land, or in the territorial waters adjacent thereto, in which or at which whales are treated whether wholly or in part;

“baleen whale” means any whale other than a toothed whale;

“blue whale” means any whale known by the name of blue whale, Sibbald’s rorqual or sulphur bottom;

“fin whale” means any whale known by the name of common finback, common finner, common rorqual, finback, fin whale, herring whale, razorback, or true fin whale;

“grey whale” means any whale known by the name of grey whale, California grey, devil fish, hard head, mussel digger, grey back, rip sack;

“humpback whale” means any whale known by the name of bunch, humpback, humpback whale, humpbacked whale, hump whale or hunchbacked whale;

“right whale” means any whale known by the name of Atlantic right whale, Biscayan right whale, bowhead, great polar whale, Greenland right whale, Greenland whale, Nordkaper, North Atlantic right whale, North Cape whale, pigmy right whale, Southern pigmy right whale or Southern right whale;

“sperm whale” means any whale known by the name of sperm whale, spermaceti whale, cachalot or pot whale;

“length” in relation to any whale means the distance measured on the level in a straight line between the tip of the upper jaw and the notch between the flukes of the tail.

ARTICLE 19.

The present Agreement shall be ratified and the instruments of ratification shall be deposited with the Government of the United Kingdom of Great Britain and Northern Ireland as soon as possible. It shall come into force upon the deposit of instruments of ratification by a majority of the signatory Governments, which shall include the Governments of the United Kingdom, Germany and Norway; and for any other Government not included in such majority on the date of the deposit of its instrument of ratification.

The Government of the United Kingdom will inform the other Governments of the date on which the Agreement thus comes into force and the date of any ratification received subsequently.

ARTICLE 20.

The present Agreement shall come into force provisionally on the 1st Day of July, 1937, to the extent to which the signature of the

Agreement informs the Government of the United Kingdom that it is unwilling to ratify it the provisional application of the Agreement in respect of that Government shall thereupon cease.

The Government of the United Kingdom will communicate the name of any Government which has signified that it is unwilling to ratify the Agreement to the other Governments, any of whom may within one month of such communication withdraw its ratification or accession or signify its unwillingness to ratify as the case may be, and the provisional application of the Agreement in respect of that Government shall thereupon cease. Any such withdrawal or communication shall be notified to the Government of the United Kingdom, by whom it will be transmitted to the other Governments.

ARTICLE 21.

The present Agreement shall, subject to the preceding article, remain in force until the 30th Day of June, 1938, and thereafter if, before that date, a majority of the contracting Governments, which shall include the Governments of the United Kingdom, Germany and Norway, shall have agreed to extend its duration. In the event of such extension it shall remain in force until the contracting Governments agree to modify it, provided that any contracting Government may, at any time after the 30th Day of June, 1938, by giving notice on or before the 1st Day of January in any year to the Government of the United Kingdom (who on receipt of such notice shall at once communicate it to the other contracting Governments) withdraw from the Agreement, so that it shall cease to be in force in respect of that Government after the 30th Day of June following, and that any other contracting Government may, by giving notice in the like manner within one month of the receipt of such communication, withdraw also from the Agreement, so that it shall cease to be in force respecting it after the same date.

ARTICLE 22.

Any Government which has not signed the present Agreement may accede thereto at any time after it has come into force. Accession shall be effected by means of a notification in writing addressed to the Government of the United Kingdom and shall take effect immediately after the date of its receipt.

The Government of the United Kingdom will inform all the Governments which have signed or acceded to the present Agreement of all accessions received and the date of their receipt.

In faith whereof the Undersigned, being duly authorized, have signed the present Agreement.

APPENDIX IX

PROTOCOL OF JUNE 24, 1938, AMENDING THE WHALING AGREEMENT OF JUNE 8, 1937

The Governments of the Union of South Africa, the United States of America, the Argentine Republic, the Commonwealth of Australia, Canada, Eire, Germany, the United Kingdom of Great Britain and Northern Ireland, New Zealand and Norway, desiring to introduce certain amendments into the International Agreement for the Regulation of Whaling, signed in London on the 8th June, 1937 (hereinafter referred to as the Principal Agreement) in accordance with the provisions of Article 21 thereof, have agreed as follows:

ARTICLE 1.

With reference to the provisions of Articles 5 and 7 of the Principal Agreement, it is forbidden to use a factory ship or a whale catcher attached thereto for the purpose of taking or treating humpback whales in any waters south of 40° South Latitude during the period from the 1st October, 1938, to the 30th September, 1939.

ARTICLE 2.

Notwithstanding the provisions of Article 7 of the Principal Agreement, it is forbidden to use a factory ship or a whale catcher attached thereto for the purpose of taking or treating baleen whales in the waters south of 40° South Latitude from 70° West Longitude westwards as far as 160° West Longitude for a period of two years from the 8th day of December, 1938.

ARTICLE 3.

(1) No factory ship which has been used for the purpose of treating baleen whales south of 40° South Latitude shall be used

for that purpose elsewhere within a period of twelve months from the end of the open season prescribed in Article 7 of the Principal Agreement.

(2) Only such factory ships as have operated during the year 1937 within the territorial waters of any signatory Government shall after the signature of this Protocol, so operate, and any such ships so operating shall be treated as land stations and remain moored in territorial waters in one position during the season and shall operate for not more than six months in any period of twelve months, such period of six months to be continuous.

ARTICLE 4.

To Article 5 of the Principal Agreement there shall be added the following:

except that blue whales of not less than 65 feet, fin whales of not less than 50 feet and sperm whales of not less than 30 feet in length may be taken for delivery to land stations provided that the meat of such whales is to be used for local consumption as human or animal food.

ARTICLE 5.

Notwithstanding the above prohibition of treatment during a close season, the treatment of whales which have been taken during the open season may be completed after the end of the open season.

ARTICLE 6.

In Article 8 of the Principal Agreement the word "baleen" shall be inserted after the word "treating".

ARTICLE 7.

For the areas specified in (a), (b), (c) and (d) of Article 9 of the Principal Agreement there shall be substituted the following areas, viz.:

(a) in the waters north of 66° North Latitude; except that from 150° East Longitude eastwards as far as 140° West Longitude the taking or killing of whales by such ship or catcher shall be permitted between 66° North Latitude and 72° North Latitude;

(b) in the Atlantic Ocean and its dependent waters north of 40° South Latitude;

(c) in the Pacific Ocean and its dependent waters east of 150° West Longitude between 40° South Latitude and 35° North Latitude;

(d) in the Pacific Ocean and its dependent waters west of 150° West Longitude between 40° South Latitude and 20° North Latitude;

(e) in the Indian Ocean and its dependent waters north of 40° South Latitude.

ARTICLE 8.

For article 12 of the Principal Agreement there shall be substituted the following, viz.: The taking of whales for delivery to a factory ship shall be so regulated or restricted by the master or person in charge of the factory ship that no whale carcass shall remain in the sea for a longer period than 33 hours from the time of killing to the time when it is taken up on the deck of the factory ship for treatment.

ARTICLE 9.

The present Protocol shall come into force provisionally on the first day of July, 1938, to the extent to which the signatory Governments are respectively able to enforce it.

ARTICLE 10.

(i) The present Protocol shall be ratified and the instruments of ratification shall be deposited with the Government of the United Kingdom of Great Britain and Northern Ireland as soon as possible.

(ii) It shall come into force definitively upon the deposit of the instruments of ratification by the Governments of the United Kingdom, Germany and Norway.

(iii) For any other Government which is a party to the Principal Agreement, the present Protocol shall come into force on the date of the deposit of its instrument of ratification or notification of accession.

(iv) The Government of the United Kingdom will inform the other Governments of the date on which the Protocol comes into force and the date of any ratification or accession received subsequently.

ARTICLE 11.

(i) The present Protocol shall be open to accession by any Government which has not signed it and which accedes to the Principal Agreement before the definitive entry into force of the Protocol.

(ii) Accession shall be effected by means of a notification in writing addressed to the Government of the United Kingdom and shall take effect immediately after the date of its receipt.

(iii) The Government of the United Kingdom will inform all the Governments which have signed or acceded to the present Protocol of all accessions received and the date of their receipt.

ARTICLE 12.

Any ratification of or accession to the Principal Agreement which may be deposited or notified after the date of definite coming into force of the present Protocol shall be deemed to relate to the Principal Agreement as amended by the present Protocol.

In witness whereof the undersigned, duly authorized thereto have signed the present Protocol.

Done in London the twenty-fourth day of June, 1938, in a single copy, which shall be deposited in the archives of the Government of the United Kingdom of Great Britain and Northern Ireland, by whom certified copies shall be communicated to all the signatory Governments.

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